

# **How did South Africa's Foreign Policy determine the choice of refugee policy adopted by South Africa between 1991–1998?**

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## *Abstract*

*South Africa adopted a local integration settlement policy for refugees which formed the basis for the reception of refugees into the country since the early 1990s. This policy also laid the foundation for Refugee legislation that was subsequently developed to deal with the arrival of refugees including the applications for asylum and the processes related thereto. The fact that South Africa decided on a local integration policy in the early 1990s is an anomaly in that many countries in the Southern African Development Community (SADC) region at the time and even now had encampment policies where refugees are kept in camps and have minimal freedom of movement outside camp settlements. Foreign policy sometimes plays a critical role in shaping domestic policy in various spheres. This research study has determined that South Africa's Foreign Policy Practice both during the transition years between 1991-1994 and post 1994 played a major role in South Africa adopting a human rights based settlement policy for refugees. This was initially informed by South Africa's desire to show the international community that the country was indeed adopting democratic principles and thus denying any role in the destabilisation in the region. After 1994 South Africa had acceded to international instruments on the protection of refugees without any reservations on the freedom of movement. The focus of the study is on the decision-making process that led to the signing of both the 1991 Memorandum of Understanding and the 1993 Basic Agreement between South Africa and the United Nations High Commissioner for Refugees (UNHCR) and subsequent adoption of the Refugees Act in 1998 to establish the role played by foreign policy and other foreign policy factors in the final decision of adopting local integration. Findings from this research further highlight the role of civic actors for both the pre and post 1994 periods. The study has implications for other countries in the region and beyond which are promoting democratic principles while curtailing the right to freedom of movement for refugees.*

DECLARATION:

I declare that this research report is my own unaided work. It is submitted to the Degree of Master of Arts in International Relations at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination in any other university.

Signature:

On this-----day of-----2012

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I would also like to thank my family for all the support and encouragement. Thank you for your understanding particularly when mommy needed to be all alone with her books. A special thanks to Siyanda for all the critical feedback.

To all asylum seekers and refugees who are settled in camps and longing for local integration, a new day will come.

The Lord is my Shepherd for without Him, I might not have been able to start and finish this project.

### **List of Acronyms:**

ANC – African National Congress

AU – African Union

AZAPO – Azanian People's Organisation

DHA – Department of Home Affairs

DIRCO – Department of International Relations and Cooperation

ICCPR- International Covenant on Civil and Political Rights

IFP – Inkatha Freedom Party

IHL – International Humanitarian Law

LHR – Lawyers for Human Rights

MP – Member of Parliament

NCCR – National Coordinating Committee on Repatriation

NCRA – National Consortium for Refugee Affairs

OAU – Organisation of African Unity

OAR – Organisation for African Refugees

PAC – Pan African Congress

RSA – Republic of South Africa

UDHR – Universal Declaration on Human Rights

UNHCR – United Nations High Commissioner for Refugees

UN – United Nations

## *Table of contents*

<b><i>Content</i></b>	<b><i>Page No.</i></b>
<i>Abstract</i> .....	1
<i>Declaration</i> .....	2
<i>Acknowledgements</i> .....	3
<i>Acronyms</i> .....	4
<i>Chapter 1: Introduction</i> .....	8
1.1 Background to the study.....	8
1.2 Aim.....	12
1.3 Rationale.....	13
1.4 Research question.....	14
1.5 Definition of terms.....	14
1.6 Structure of report.....	14
<i>Chapter 2: Theoretical framework and Literature review</i> .....	18
2.1 Introduction.....	18
2.2 Theoretical framework.....	18
2.3 Literature Review.....	24
2.3.1 The situation of refugees.....	24
2.3.2 Camps vs. local integration.....	26
2.3.3 South African Foreign Policy.....	30

2.3.4 Refugee issues in Southern Africa, Africa and globally .....	35
2.3.5 International standards.....	37
2.3.6 Freedom of movement.....	42
<i>Chapter 3: Methodology</i> .....	45
3.1 Introduction.....	45
3.2 Archival/documentary analysis.....	47
3.3 Semi-structured interviews.....	49
3.4 Limitations.....	51
<i>Chapter 4: South Africa's Foreign Policy Practice</i> .....	52
5.1 Introduction.....	52
5.2 South African Foreign Policy pre-1994.....	55
5.3 South African Foreign Policy Practice post-1994.....	59
<i>Chapter 5: International norms and standards and decision-making in refugee policy and Foreign Policy Practice</i> .....	63
5.1 Introduction.....	63
5.2 International norms.....	63
5.3 International Humanitarian Law and Human Rights Law.....	67
5.4 The role of UNHCR in South Africa.....	69
5.5 Right to freedom of movement.....	76

<i>Chapter 6: Domestic Politics, domestic actors and Foreign Policy practice.....</i>	<i>79</i>
6.1 Introduction.....	79
6.2 Mobilising for non-nationals rights.....	79
 <i>Chapter 7: Analysis of findings and conclusions.....</i>	 <i>89</i>
7.1 Introduction.....	89
7.2 Presentation of findings.....	91
Conclusion.....	119
 Annexure A	
 Annexure B	
 Annexure C	
 Annexure D	
 Bibliography	



## *Chapter 1: Introduction*

### **1.1 Background:**

Thousands of people continue to be forcibly displaced in many parts of the world and many of them become refugees in other countries. In responding to this displacement, governments have to put in place policy and legislative frameworks to deal with the reception of refugees upon arrival in their territories. These frameworks are also aimed at further highlighting the rights and responsibilities associated with the sojourn of the displaced people in the host country. South Africa is not unique in this regard as it has had to develop legislation and policy that deals with the reception and sojourn of refugees in the country. South African legislative framework post-1994 has been informed by the international and regional instruments that the country has acceded to which deal with issues related to forced migration and particularly in this case, the situation of refugees. However, before 1994, South Africa had not acceded to any of the international instruments that provide for the protection of refugees.

This research provides an analysis of the decision-making process that South Africa and the United Nations High Commissioner for Refugees (UNHCR) engaged in before the signing of the 1991 Memorandum of Understanding (MoU) and the 1993 Basic Agreement that laid the foundation for the adoption of a local integration and not encampment policy for the settlement of refugees in the country. The analysis is done to determine whether South Africa's Foreign Policy in the early 1990s had any influence on the subsequent adoption of the local integration settlement policy. While the main focus of the research is the decision-making process related to the 1993 Basic Agreement and the 1991 MoU that formed the basis for the 1993 agreement, the research has further explored the broader refugee and foreign policy environment to the present. The expansion to include the period beyond 1993 is informed by the fact that South Africa only adopted legislation specific to refugees in 1998 (namely, Refugees Act, Act No 130 of 1998) which only came into effect in April 2000. The research also covers some of the current discourse on asylum and immigration policy in South Africa for comparison purposes.

This research is of very relevant for international relations because refugee flows have implications for both the sending and receiving countries. This is because decisions taken by the receiving country inevitably have indirect implications for the sending country. Thus exploring the role of foreign policy in determining a refugee policy will provide us with an explanation of the factors that governments take into consideration in making decisions around this issue. It is not the intention of this study to look at the impact of the refugee policy that was adopted by South Africa on refugees who have settled in the country but will provide a brief discussion on the pros and cons of settling in camps and within host communities (local integration).

South Africa is currently moving towards a more restrictive immigration and asylum policy environment. In this regard, South Africa is now in the process of exploring moving the current Refugee Reception Offices<sup>1</sup> where refugees apply for asylum to border areas in an attempt to reduce particularly the number of asylum seekers that the government claims are abusing the asylum system from reaching the mainland. Two Refugee Reception Offices had already been closed in 2011. South Africa is also said to currently be in discussions with other countries in the region on issues of burden sharing in an attempt to reduce the number of asylum seekers reaching the country. The African National Congress (ANC) published a policy document titled “Peace and Stability” detailing how they plan to improve services at the Department of Home Affairs particularly the unit responsible for refugees and highlighted the proposal to move Refugee Reception Offices to border areas. On the positive side, the document proposes that the policy of non-encampment be maintained. It is interesting to them compare what was different in the 1990s.

In explaining the role played by foreign policy in determining refugee policy in South Africa, I have explored three explanatory factors that might have accounted for this choice of policy. The first is the role played by foreign policy practice and the extent to which it impacted on refugee policy adopted. The second explanatory factor that has been explored is South

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<sup>1</sup> At the beginning of 2010, South Africa had seven Refugee Reception Offices (RROs), namely, Crown Mines RRO (Johannesburg), Marabastad RRO (Pretoria), Tshwane Interim Refugee Reception Office (TIRRO, Pretoria), Port Elizabeth RRO, Durban RRO, Musina RRO and Cape Town. However, by the end of 2010, the Crown Mines and Port Elizabeth RRO had already been closed. These closures have both been challenged in courts of law by civil society organisations, notably, the Consortium for Refugees and Migrants in South Africa, Coordinating Body for Refugee Communities, Lawyers for Human Rights, Nelson Mandela Metropolitan University,

Africa's participation at the international level and what impact this had on the final policy that was adopted looking at international norms and standards and international regimes. The third explanatory factor explored is the role of domestic politics, including the role of pressure groups and views of political parties. Domestic politics and actors are often said to have an impact on foreign policy decisions and vice versa and thus it was important that I explore their role particularly since at the time the decisions were taken there were significant political changes taking place in South Africa.

South Africa had a particular decision-making process at the time which was embarked upon to ultimately take the decision on the specific refugee policy. However, what this research sought to establish was whether foreign policy had any influence on this decision. At the time the policy was adopted South Africa's foreign policy was still guided by the principles of the apartheid government which promoted an isolationist agenda while also engaged in destabilisation in the Southern African Development Community (SADC). Post-1994, South Africa's foreign policy is guided by the promotion of human rights and promoting the interests of SADC and the broader African continent. Equally important to note is that at the time of signing the 1991 MoU and the 1993 Basic Agreement, South Africa was in a transition and in the process of dismantling the policy of apartheid.

Some of the key questions that I took into account in answering my main research question are: What were the processes followed in making this decision? What was the involvement of international organisations in the consultative processes? What was the composition of the team that was tasked with making this decision? Was there a balance between those who had been in exile and those who never left South Africa? What was South Africa's Foreign Policy during the transition period when this decision was taken? What was the policy making process at the time? Who were the decision makers and what information was available to them that allowed them to reach the decision that was taken.

In addressing the decision-making process in South Africa it is also important that one reflects on the broader regional and continental environment that South Africa operated and still operates in. The Southern African Development Community (SADC) has also seen its fair share of refugee movements due to conflicts that have taken place in this region for many years. Before 1994, some of these conflicts were as a result of South Africa's destabilisation

policy. It is further noted that forcible population displacement is known to have taken place in the region even in pre-colonial and colonial times.<sup>2</sup> However, South Africa did not encourage all refugees in its territory.

The large influx of refugees that has been noted that coincided with this process is that of Mozambican refugees. However, after the dawn of democracy South Africa received large influxes of refugees first from the Great Lakes region and later from Zimbabwe and Somalia.

South Africa first signed a Memorandum of Understanding with the United Nations High Commissioner for Refugees (UNHCR) in 1991 which dealt with the return of South African exiles.<sup>3</sup> This was followed by other agreements including the Basic Agreement between South Africa and UNHCR in 1993 which extended the mandate of UNHCR in South Africa to deal with refugees from other countries and not only South African returnees and the Tripartite agreement between South Africa, Mozambique and UNHCR for the voluntary repatriation of Mozambican refugees in October 1993.

It has been argued that South Africa did not promote acceptance of refugees during the apartheid regime<sup>4</sup>. The practice of not encouraging refugees (particularly from the African continent) happened despite the fact that a number of literature indicate that South Africa played an active role in promoting destabilisation in the SADC region.<sup>5</sup> The destabilisation

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<sup>2</sup> Rutinwa, B. 'Asylum and refugee policies in Southern Africa: A historical perspective, <http://www.sarpn.org.za/documents/d0001212/rutinwa/rutinwa.pdf>.

<sup>3</sup> Memorandum of Understanding between the Government of the Republic of South Africa and the United Nations High Commissioner for Refugees on the voluntary repatriation and reintegration of South African returnees, signed by the State President on 30 August 1991.

<sup>4</sup> See Klotz, A. "International Relations and Migration in Southern Africa", in *African Security Review*, 1997, Vol 6, Issue 3, pp 38 – 45; Peberdy, S. 2008. Selecting Immigrants: National Identity and South Africa's Immigration Policies 1910-2008, Wits University Press: Johannesburg

<sup>5</sup> Klotz, A. "International Relations and Migration in Southern Africa" *African Security Review*, 1997, Vol 6, Issue 3, p.43.

policy involved South Africa supporting rebel forces in neighbouring countries and thereby promoting civil conflicts. This in turn resulted in thousands of people having to flee their countries of origin in the region to seek refuge in other countries (including in South Africa, notably Mozambicans and Angolans). This is particularly evident in the case of Mozambican refugees who fled to South Africa during the civil war between FRELIMO and Renamo. It is argued that South Africa refused to acknowledge those Mozambicans seeking protection in South Africa as refugees but simply let them be until the country signed a formal agreement with UNCHR in 1993.<sup>6</sup>.

However, what makes the relationship between South Africa's Foreign Policy and Refugee Policy of particular interest under the democratic dispensation is that at the time that South Africa signed the Basic Agreement with UNHCR in 1993 to accept refugees, South Africa did not choose an encampment policy but instead opted for a local integration policy. The refugee settlement policy chosen by South Africa is quite significant because at the time and at present, many countries in the region (SADC) and the continent favoured and still favour keeping refugees in camps and allow them minimum interaction with their host communities. The policy choice is also significant in that in 1991 and 1993 South Africa was still a repressive regime promoting racial segregation.

Countries in the region that have encampment policies for refugees include Zimbabwe, where many refugees have been settled at the Tongogara camp. In Botswana there is the Dukwi Refugee camp and in Namibia the Osire refugee camp. While there has been some relaxation of these policies in some of these countries by allowing certain categories of refugees to leave the camps, camp settlement remains the preferred option. It is thus important to understand what motivated South Africa to choose the local integration policy. Exploring the role of foreign policy on South Africa's decision above was further particularly important because there have been claims made that South Africa owes huge debts to other countries which provided shelter and protection to those who fled from persecution by the apartheid regime. The research also aimed to establish if this issue was ever brought up and/or taken into account in having a non-encampment policy.

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<sup>6</sup> Polzer, T. "Adapting to Changing Legal Frameworks: Mozambican Refugees in South Africa-An Historical Overview", *International Journal of Refugee Law* 19(1), 2007

## **1.2 Aim:**

Governments have a choice on whether or not to adopt encampment for refugees who have sought refuge in their territory. In order to decide on which settlement policy to adopt, decision-makers often have to engage others with competing interests and have to balance their country's domestic priorities and those at the international level. This research aims to contribute towards scholarly work on the intersection between foreign and domestic policy streams particularly around decision-making involving foreign policy and refugee policy for newly democratised countries and countries in transition. The study further aims to contribute to the debate on camps vs. local integration as settlement policies for refugees leaning more towards supporting local integration option.

## **1.3 Rationale:**

Most of the research that has been conducted in South Africa regarding refugee policy mainly focuses on the policy development and implementation, particularly processes that led to the development of the Refugees Act. However, little research has been done on the actual processes that laid the foundation for the reception of refugees in the country from early 1990s, that is, the initial agreements signed between South Africa and UNHCR. Most of the available literature makes a brief reference to these processes but no in-depth research has been done thus far. This study aims to address this gap. The second issue is that since South Africa chose a local integration policy while other countries in the region and continent had encampment policies was an anomaly that needed to be explored and explained which this research has done.

The other shortcoming on the available literature is that most of the literature that illustrate the relationship between foreign policy and refugee policy is from the West and very little of this literature is written from the African and particularly SADC perspective. This study thus further contributes to African scholarship on foreign policy and refugees. This study is also important in building literature on the intersection between foreign policy, decision-making and refugee policy and has implications for the study of migration. This is important

particularly as it has been noted that migration is often seen as a zero-sum game.<sup>7</sup> With regards to decision-making processes one author has noted that ‘there is a very limited number of analyses of migration looking at it as any other sector of public policy-making, that is, understanding the actual mechanisms at play behind decision-making and implementation and not only the extent of the problem or the efficiency of means employed to get rid of it’.<sup>8</sup> This research study has tried to address this observed gap.

#### **1.4 Research question:**

The main question that I sought to answer is “How did South Africa’s Foreign policy factors determine the choice of refugee policy adopted by South Africa between 1991- 1998?”

#### **1.5 Definition of terms:**

**Refugee** is a person who has been forced to leave or flee their country of origin because of persecution either as an individual or as part of a group. A formal definition of refugee is provided below.

**Asylum seeker** is someone who has applied to be a refugee but is still awaiting the outcome of his/her asylum application.

**Immigrant** is a person who has left their country to live in another country on either temporal or permanent basis usually in search of better economic opportunities.

#### **1.6 Structure of the report:**

This research report is structured as follows:

Chapter 1 provides a brief introduction of the research project. This chapter gives background to the study and highlights the context within which it arose. When the 1991 MoU and the 1993 basic agreement were signed, South Africa was a country in transition and there were

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<sup>7</sup> Wa Kabwe, A. and Landau, L. Op cit p56

<sup>8</sup> Wa Kabwe-Segatti, A. (2008) ‘Reforming South African Immigration policy in the post-apartheid period (1990-2006): What it means and what it takes’ in Wa Kabwe-Segatti and Landau L. (eds) (2008): Migration in post-apartheid South Africa: Challenges and questions -to policy-makers, AFD. p.57

many role players both domestic and international and it was important that their role be explored in this research. The chapter thus gives a background and an overview of this study and how it relates to current developments in refugee protection in South Africa.

Chapter 2 deals with the literature review and an outline of the theoretical frameworks within which this research has been situated. The Chapter begins with an outline of the main theoretical framework used to analyse the findings of this study. These are; Constructivism which is an approach to “social analysis that deals with the role of human consciousness in social life and it asserts that human interaction is shaped primarily by ideational factors and that the most important ideational factors are widely shared or inter-subjective.”<sup>9</sup>

Constructivism further makes claims about the nature of social life and social change and thus looks at social structures, ideas, norms etc. and argues these would be meaningless if there was no mutually agreed upon meaning allocated to them.<sup>10</sup> The second framework used is that proposed by Jacobsen (1996) which looks at different policy sets that assist governments in making decisions when choosing particular refugee policy. This model is used in this study as an analytical tool of the actual decision-making process and process-tracing is used within this model to show the causal chain.

Chapter 3 highlights the methodology used in gathering and analysing the collected data. This study uses the qualitative method of research for gathering information. The primary method used to gather information was document analysis where I as the researcher studied the minutes and reports of meetings of parliamentary discussions, studied agreements signed between South Africa and UNHCR, cabinet memo, minutes and reports at the Department of Foreign Affairs, minutes and records from UNHCR Geneva Archives and newspaper articles. The secondary method of data collection that was employed in this study was the use of semi-structured interviews with some of the informants who were involved in the processes that led up to the policy decisions. This chapter also highlights some of the challenges experienced in trying to secure some of the official documents that I needed. For instance,

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<sup>9</sup> Finnemore, M. and Sikkink, K. ‘Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics’, *Annual Review of Political Science* Vol 4, June 2001, p391

<sup>10</sup> Ibid, pp.391-392



whilst I could get access to minutes of meetings between South Africa through the Department of International Relations and UNHCR, I had challenges accessing any official documentation from the Department of Home Affairs and thus had to compensate by using parliamentary discussions on the matter to contribute to my analysis and conclusions. This chapter also highlights the limitations of the study.

Chapter 4 discusses South Africa's foreign policy practice and its implications for domestic policy particularly in the area of refugees. The chapter looks at two periods of South Africa's foreign policy development and practice, namely the pre-1994 and post-1994 dispensations. This chapter also highlights challenges faced by South Africa post 1994 in trying to frame a foreign policy agenda based on principles of human rights, democracy while also promoting a regional and continental agenda globally. The chapter further highlights how South Africa has responded to regional and continental migration in pursuit of its foreign policy objectives.

Chapter 5 deals with International norms and standards and foreign policy practice. This chapter details international norms and standards as laid down by international conventions and treaties with particular emphasis on decision-making and policy development on refugee and immigration issues and how these are impacted upon by foreign policy. Particularly important is the role of United Nations organisations in norm socialisation and states' desire to conform or not conform to these. The issue of treaty ratification as a norm is also explored in this chapter.

Chapter 6 looks at domestic politics highlighting the role played by domestic actors in influencing policy decisions. This chapter also highlights how foreign policy manifests itself at the domestic level and how domestic policy is influenced by foreign policy practice. Critically important in this chapter is the role of domestic actors in the decision-making process from 1991 onwards and the resultant policy decisions as far as refugee policy is concerned. This chapter further discusses the positions taken by various domestic actors in contributing towards the adoption of non-encampment. Domestic actors highlighted in this chapter include church groups, civil society organisations, political parties and many others.

Chapter 7 discusses the findings and conclusions from this research project using Constructivism and Jacobsen's Refugee Policy Choices framework employing the method of

process-tracing. Some of the findings indicate that foreign policy influenced the choice of refugee policy through the way it was practised. That is, foreign policy in relation to refugee issues was initially aimed at denial of the destabilisation policy pre-1994 and foreign policy practice aimed at promoting principles of democracy and respect for human rights post-1994.

## ***Chapter 2: Theoretical Framework and Literature Review***

### **2.1 Introduction:**

This chapter outlines the theoretical framework within which this study has been positioned and details literature that has been reviewed for this research highlighting some of the gaps and thus the justification for doing the research. I begin the chapter by providing a definition of international relations and highlight the different elements that are critical for the study of international relations and particularly those that have been explored in this study. The literature reviewed for this research can be summarily divided into three sections: namely, the role of South African foreign policy and its practice, particularly South Africa's commitments to the SADC region and the African continent; the international norms and standards 'decision-making about refugee policy, driven and housed within international agencies which potentially impacted on SA foreign policy regarding refugees; and domestic actors, including the ANC and its influence on foreign policy and pressure groups. This section also covers a discussion on camps and local integration globally but with an emphasis on Africa and SADC.

### **2.2 Theoretical framework:**

Many scholars have provided definitions for international relations. However, for the purposes of this study, I have adopted the definition by Goldstein. He argues that 'strictly defined the study of international relations (IR) concerns the relationships among the world's governments [...but] these relationships cannot be understood in isolation [as] they are closely connected with other actors (such as international organisations, multinational corporations and individuals; with other social structures (including economics, culture, and

domestic politics); and with geographical and historical influences.’<sup>11</sup> As a result, International relations is seen as ‘a large subject that overlaps several other fields’.<sup>12</sup> For this research therefore I have explored the role played by different factors that have a bearing on international relations falling into three broad international relations categories, namely, foreign policy, international organisations and domestic politics. This research has highlighted the fact that international relations is not only a field influenced by foreign policy but that there are other equally important factors that have a bearing on international relations and thus an effect on a country’s relations with other countries and institutions.

There are different paradigms within which research can be situated in International Relations. These are positivism and post-positivism. Based on my research question and the associated sub-questions, I situated this study within Constructivism which is a post-positivist approach to International Relations. Constructivists promote a hermeneutical approach which maintains that meaning is hidden and must be brought to the surface through deep reflection.<sup>13</sup> Ponterotto further argues that the constructivist-interpretive paradigm provides the primary foundation and anchor for qualitative research.<sup>14</sup> In line with the constructivist approach, I have decided to use process-tracing as the method for data analysis. In using process-tracing, I aimed to identify critical stages of foreign policy decision-making and to identify what key events the decisions coincided with. Further process-tracing assisted in guiding the participants to reflect on the actual processes that they participated in related to this study.

There are different types of process-tracing. Namely, detailed narrative, use of hypotheses and generalizations, analytic explanation, more general explanation.<sup>15</sup> For this research, I used the analytic explanation process-tracing which is defined as ‘...process-tracing [which]

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<sup>11</sup> Goldstein, J. 2003. *International Relations* (5<sup>th</sup> edition), Longman: New York, p3

<sup>12</sup> Ibid.

<sup>13</sup> Ponterotto, J.G. Qualitative Research in Counselling Psychology: A primer on Research Paradigms and Philosophy of Science, *Journal of Counselling Psychology*, 2005, Vol 52, No 2, p129

<sup>14</sup> Loc cit.

<sup>15</sup> George A.L. and Bennett, A. *Case Studies and Theory Development in the Social Sciences* Cambridge, MA: MIT Press, 2005, pp. 210-211.

converts a historical narrative into an analytical causal explanation couched in explicit theoretical forms.<sup>16</sup> Process-tracing is defined as 'It has been noted that "tracing the processes that may have led to an outcome helps narrow the list of potential causes"'.<sup>17</sup> It has been noted that process tracing is useful in historical studies and is invaluable in analysing decision-making processes.<sup>18</sup> It is for these reasons therefore that I have chosen to use this method of analysis in analysing the decision-making process that is the subject of this study.

Scholars like Wendt, Finnemore and Sikkink, Houghton, Parsons and Fierke have highlighted the fact that constructivists have different views on 'substantive and epistemological issues' regarding the approach. However, while there are these differences among the various constructivists, they agree on the general assumptions of the theory.

The assumptions that constructivism makes can be summarised as follows;<sup>19</sup> Constructivism focuses on the role of ideas, norms, knowledge, culture and argument in politics, stressing in particular the role of collectively held or intersubjective ideas and understandings of social life. Further constructivism claims that human interaction is shaped primarily by ideational factors and not simply material ones. The most important ideational factors are widely shared or "intersubjective" beliefs which are not reducible to individuals and these shared beliefs construct the interests and identities of purposive actors.

In addition to the above, constructivism is said to be more concerned about 'social facts' which are those facts that depend for their existence on what we believe about them and also whether we believe in them at all as opposed to 'brute facts'.<sup>20</sup> Social structures are said to

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<sup>16</sup> George A.L. and Bennett, A. *Op cit.* p211

<sup>17</sup> George, A.L. and Bennett, A. *Op cit* p.207.

<sup>18</sup> Ibid.

<sup>19</sup> Finnemore, M. and Sikkink, K. 'Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics', *Annual Review of Political Science*, Vol 4, 2001, pp. 391-392

<sup>20</sup> Houghton, D. P. 'Reinvigorating the Study of Foreign Policy Decision Making', *Foreign Policy Analysis* Vol 3, 2007, p28

leave more space for agency which allows for individuals or states to influence their environment but also be influenced by it.<sup>21</sup>

It has been argued that in constructivism ‘ideas are important as they constitute both identities and interests. In this regard, there is great emphasis on collective ideas and norms’.<sup>22</sup>

It has further been noted that while constructivism ‘is not a substantive theory of politics, [it is nonetheless] a social theory that makes claims about the nature of social life and social change’.<sup>23</sup> Therefore the themes presented by constructivism of ‘change, sociality and the processes of interaction point to the added value of constructivism within a field that has emphasized generalisation across time, materiality and rational choice.’<sup>24</sup> In other words, constructivism focuses on social facts. Understanding these is important to make sense of the world.

There are several themes that have been identified that are important for a constructivist approach. Firstly, that there is no single subjective reality but the idea of social construction suggests difference across context rather than a single objective reality’<sup>25</sup>. As a result, constructivists have put much effort in understanding and explaining change within the international system.<sup>26</sup> Secondly, constructivists have emphasized the social dimension of international relations and have demonstrated the importance of norms, rules, and language at this level. Thirdly, constructivists have argued that, far from an objective reality, international politics is ‘a world of our making’<sup>27</sup>. This was mainly in response to the claims made by rationalists that there is an objective reality.

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<sup>21</sup> Fierke, K.M. ‘Constructivism’ in Dunne, T et al (eds). 2010. *International Relations Theories: Discipline and Diversity* (2<sup>nd</sup> Edition). Oxford University Press: New York. p 181

<sup>22</sup> Houghton, D. P. Op. cit., p29.

<sup>23</sup> Finnemore, M. and Sikkink, K. ‘Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics’, *Annual Review of Political Science*, Vol 4, June 2001, p 393.

<sup>24</sup> Fierke, K.M. ‘Constructivism’, p180.

<sup>25</sup> Fierke, K.M. ‘Constructivism’ in Dunne, T et al (eds). 2010. International Relations Theories: Discipline and Diversity (2<sup>nd</sup> Edition). Oxford University Press: New York. p 179

<sup>26</sup> Fierke, K.M. Op.cit. p178

<sup>27</sup> *Ibid.* p180

It is said that constructivists tend to focus more on the norms and shared understandings of legitimate behaviour<sup>28</sup>. This point will be highlighted when discussing the role of norms in South Africa's choice of a refugee policy. To summarise one would then argue that constructivism promotes the fact that reality is constructed in the mind of the individual, rather than it being an externally singular entity.<sup>29</sup>

Parsons has identified different mechanisms that are employed for social constructs to work. These are socialization, persuasion and bricolage.<sup>30</sup> Parsons argues that socialization 'suggests that norms or ideas are spread in a relatively incremental, evolutionary way generated by repeated interaction within groups'.<sup>31</sup> The second mechanism is persuasion which happens when new ideas are brought into the political landscape and are accepted and used by those who are being persuaded.<sup>32</sup> The third mechanism by which social constructs are formed is bricolage which highlights a situation where actors "develop ideas and norms and practices to suit rather discreet problems and goals and we end up with a complex landscape of overlapping realms of action".<sup>33</sup> In addition to all that's been mentioned above about Constructivism, it is important to note that how states are identified shapes their preferences and action. This study has shown that the identity that successive South African governments chose to project both before and after 1994 did shape their preferences and actions on various issues including refugee policy and protection.

Constructivism also espouses logic of appropriateness which is described as the behaviour of actors that is seen as right and appropriate under prevailing international conditions. The fact

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<sup>28</sup> Ibid.

<sup>29</sup> Hansen, J.T. 2004. Thoughts on knowing:Epistemic implications of counselling practice. *Journal of Counseling & Development*, 82

<sup>30</sup> Parsons, C. 'Constructivism and Interpretive Theory' in Marsh, D. and Stoker, G. (eds). 2010. Theory and Methods in Political Science, Palgrave MacMillan: New York, pp.94-96

<sup>31</sup> Parsons, C. 'Constructivism and Interpretive Theory', p 94

<sup>32</sup> Loc cit.

<sup>33</sup> Loc cit.

that constructivism emphasis is put on actors doing the right thing rather than maximizing or optimizing their given preferences<sup>34</sup> makes the case of South Africa interesting.

The second framework within which this research is situated is the policy model proposed by Jacobsen (1996) which proposes policy sets that host governments can go through when deciding on a policy option for the reception and settlement of refugees. This model is used to supplement constructivism as a theoretical framework. Jacobsen's model is proposed for mass influx situations; however, my observation is that it could be a useful framework for looking at decision-making processes even in the absence of mass influx. The reason for this is that the framework does not really depend on the number of refugees arriving in a country for it to be effective but requires that there be government officials to make the decisions. For instance in the case of South Africa, the decision to adopt the local integration policy was taken in the absence of mass refugee influxes but in the context of the repatriation of former South African refugees and exiles.

Jacobsen proposes a framework that involves three sets of policy choices concerning the treatment and protection of refugees. Policy Set I concerns the admission and treatment of refugees, stating that with the appearance of displaced people at its border, the government must decide whether to respond negatively by denying them entry or positively by accepting them<sup>35</sup>. This further means that decisions must be made concerning the rights of and restrictions imposed on refugees, the degree of protection to be accorded to them and who is responsible for this protection. Policy set II concerns the government response to international refugee organisations, including UNHCR and nongovernmental organisations (NGOs) concerned with refugees<sup>36</sup>.

Policy Set III concerns institutional or legal-bureaucratic matters related to refugees. One decision in this regard concerns accession to international refugee agreements and

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<sup>34</sup> Fierke, K.M. "Constructivism" in Dunne, T. et al (eds). *International Relations Theories* Discipline and Diversity (second edition) Oxford University Press: Oxford

<sup>35</sup> Jacobsen, K. (1996): 'Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes', *International Migration Review*, Vol. 30, No 3 Autumn 1996, pp 658 – 660.

<sup>36</sup> Ibid.



conventions.<sup>37</sup> This policy set also involves decisions by governments on whether to allocate a separate civilian bureaucracy whose sole function is the care of refugees or whether to simply assign this responsibility to an existing ministry or the army.<sup>38</sup> In the context of South Africa, the government decided to keep the issues of refugees under the Department of Home Affairs particularly with regards to documentation and processing of asylum claims. Constructivism resonates well with Robert Cox's historical structures social forces approach. The three categories of forces proposed by Cox which interact in structure are material capabilities, ideas and institutions.<sup>39</sup> These social forces resonate well with the principles of constructivism. I will thus illustrate through the three explanatory foreign policy factors how these forces all merged to influence the choice of refugee policy chosen by South Africa.

Before concluding this section, it is important to note that there are other approaches that can be used to analyse foreign policy decision making. For instance, the Global Government Networks developed by Anne-Marie Slaughter quoted in Irvine (2011). This model provides that these networks are an important venue through which decision-makers are socialised into international norms.<sup>40</sup> While this is an important model, it is limited to only decision-makers engaging at the international level. I have thus chosen constructivism because it takes into account the context within which actors operate.

## **2.3 Literature Review:**

### **2.3.1 The situation of refugees:**

The UNHCR Global Trends report for 2010 indicates that there were 43.7 million displaced people globally in 2010 of which 15.4 million were refugees...[and that] there are 850,000

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<sup>37</sup> Ibid, p.660.

<sup>38</sup> Ibid.

<sup>39</sup> Cox, R. "Social forces, states and world orders" in Little, R. and Smith, M. (eds) Perspectives on World Politics 2<sup>nd</sup> edition, Routledge: London, 449.

<sup>40</sup> Irvine, J.A.S. "Canadian Refugee Policy: Understanding the role of international bureaucratic networks in domestic paradigm change", 16-18 May 2011.

asylum seekers in the world with nearly one fifth of them in South Africa alone.<sup>41</sup> The report further notes that 80 per cent of these refugees are found in the developing world. Africa has its fair share of refugees due to the instability and many conflicts that have occurred in the continent. Many refugees in the continent are in protracted refugee situations which are defined by UNHCR as [a situation] ‘in which a large number of people are stuck in exile for five years or longer.’<sup>42</sup> For a breakdown on South Africa’s refugee statistics from 1990 to 2010 please refer to Annexure A and Annexure B.

Whilst many refugees are vulnerable due to the nature of their displacement (having lost possessions and loved ones during flight) not all of them are as vulnerable as they are commonly depicted. For instance, research has found that in some cases, refugees are more educated and more economically active than some members of their host communities.<sup>43</sup>

The way refugees are labelled poses challenges for them as this labelling creates a particular identity which often takes away their agency.<sup>44</sup> In this regard, it is useful to think of forced migrants as ‘purposive actors’, people who can make decisions noting that the study of forced migration often focuses on ‘public policy and private need’ and little attention is being paid on the agency of forced migrants and the kind of information that is accessible to them before leaving their places of habitual residence which then allows them to make decisions regarding where they will seek asylum.<sup>45</sup>

Sometimes refugees are faced with negative sentiments which results in xenophobic attacks as happened since the late 1990s and which have continued beyond that. In accepting

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<sup>41</sup> “World Refugee Day: UNHCR Report finds 80 per cent of world’s refugees in developing countries”. <http://www.unhcr.org/4dfb66efd.html>. 20 June 2011

<sup>42</sup> Ibid

<sup>43</sup> see Jacobsen 2005; Landau and Duponchel 2011

<sup>44</sup> Zetter, R. 1991. “Labelling Refugees: Forming and Transforming a Bureaucratic Identity.” *Journal of Refugee Studies* 4(1), pp. 44-45

<sup>45</sup> Turton, D. “Conceptualising Forced Migration” Working Paper Series No 12, Refugee Studies Centre, Oxford, October 2003, p12

refugees, states usually have to decide between confining them to camps, promoting local integration (which is promoted by UNHCR as one of the durable solutions) or confining them to settlements.

### **2.3.2 Camps vs. local integration:**

The debate on whether refugees should be settled within local communities or be confined in camps has received attention over many years with many researchers in forced migration and other fields making their views known on the subject<sup>46</sup> There are many definitions of local integration that have been proposed by various authors. *De facto* integration has been defined as a situation ‘where the lived, everyday experiences of refugees are that of being part of the local community’.<sup>47</sup> On the other hand Polzer defines local integration ‘as a process of negotiating access to local legitimacy and entitlement on the basis of a variety of value systems determined by local power holders in dialogue with refugees.’<sup>48</sup> Simply put local integration occurs when refugees are allowed to live within local communities without being confined in camps in the countries where they have sought refuge. It has been noted that a large number of refugees often avoid official settlements or camps and settle themselves within the local population for many reasons.<sup>49</sup> The camp vs local integration debate continues to this day.

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<sup>46</sup> see Black 1998; Gaim 1989, Harrell-Bond 1998; Polzer 2004; Polzer 2007; Jacobsen 2005

<sup>47</sup> Jacobsen, K. 2001. “The forgotten solution: local integration for refugees in developing countries” UNHCR New Issues in Refugee Research, Working Paper 45,

<sup>48</sup> Polzer, T. 2008. “Negotiating Rights: The Politics of Local Integration”. Forced Migration Studies Programme Working Paper Series 41,p3

<sup>49</sup> Jacobsen, K. 2005. “Introduction: Displaced Livelihoods”, *The Economic Life of Refugees*. New York: Kumarian Press, p6

Many governments have often stated the need to create refugee camps as being motivated by the fact that refugees often arrive as a mass influx. However, it is maintained that this situation actually only happens rarely.<sup>50</sup> Jacobsen maintains that many refugees arrive in their host countries in small numbers over extended periods of time. She further notes that ‘...many countries never experience a mass influx, instead, refugee populations accumulate over prolonged periods with return movements frequently interspersed.’<sup>51</sup>

In the case of South Africa in the early 1990s, the only influx that was experienced was that of Mozambican refugees, thereafter there has been an accumulation of refugees from the Great Lakes region, Rwanda, Somalia and other countries over the years since 1994. There was also a large number of Zimbabweans who arrived in South Africa in the late 2000s but this was never officially considered an influx.

There are also those refugees who self-settle themselves without necessarily engaging with the authorities of the host government. In this case, it is noted that self-settled refugees are usually left undisturbed by the authorities; however, if there is an influx of refugees, then the host governments often restrict these refugees to areas near the border in camps or some other settlement.<sup>52</sup> The policy of restricting refugees in camps is usually informed by a number of reasons including, security concerns, the ability to manage large numbers of refugees and at times because they do not want refugees to travel to urban areas<sup>53</sup>.

Black argues that before indicating whether camps are bad or good for refugees, it is important to explore the reasons why camps are usually preferred by both host governments and international aid organisations.<sup>54</sup> The reasons quoted include accessibility of the refugee community to service providers, accountability and addressing security concerns. Black

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<sup>50</sup> Jacobsen, K. 2005, “Introduction: Displaced Livelihoods”, *The Economic Life of Refugees*. New York: Kumarian Press, p6

<sup>51</sup> Loc cit.

<sup>52</sup> Loc cit.

<sup>53</sup> Loc cit.

<sup>54</sup> Black, R. ‘Putting Refugees in Camps’. *Forced Migration Review*. Issue 2, August 1998

further states that when discussing the negative aspects of camp life, policy makers, scholars and practitioners need to be specific about which part of camp life is bad for the refugees. Some authors have quoted ‘overcrowding’, ‘dependency’ and exclusion of refugees from the broader host society as some of the reasons why camps are bad.

It has been argued that for many host governments, accessibility of the refugees, efficiency and transparency of aid delivery are less important than potential conflict between refugee communities and the local community.<sup>55</sup> Also critically important for host governments are the political and security implications of the pattern of refugee settlement. However, host governments and aid agencies continue to prefer camp settings because ‘it is easier to reach the refugees and provide direct assistance to them’<sup>56</sup> than when they are settled among the host society. The separation of refugees from local populations exacerbates their marginalisation onto the poorest quality and probably least accessible, land.<sup>57</sup>

Harrell-Bond in her literature review of housing refugees in camps, mentions some of the negative effects of keeping refugees in camps including the fact that ‘establishing parallel services [for refugees] undermines local institutions... and that targeting relief to camps, surrounded by people often as poor or poorer than refugees, is wasteful and generates hostility from local communities’<sup>58</sup>. Harrell-Bond further states that camps provide ideal breeding grounds for politicisation and for violence and terrorism.<sup>59</sup> Those who support local

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<sup>55</sup> Ibid.

<sup>56</sup> Black, R. Op cit.

<sup>57</sup> Black, R. ‘Putting Refugees in Camps’. *Forced Migration Review*. Issue 2, August 1998

<sup>58</sup> Harrell-Bond, B. ‘Camps: Literature Review’. *Forced Migration Review*, Issue 2 (August 1998).  
<http://www.fmreview.org/FMRpdfs/FMR02/fmr2full.pdf>

<sup>59</sup> Ibid.

integration have argued that refugees are a potential asset and not a burden to the host countries and therefore should not be kept in camps.<sup>60</sup>

The case of South Africa choosing a local integration policy for refugees is an interesting one in the region. This is particularly so when one compares South Africa to Botswana which has similar demographics with South Africa and yet chose to adopt an encampment policy.

Botswana keeps refugees at the Dukwi Refugee Camp. Botswana made reservations on the freedom of movement when they ratified the UN Convention on Refugees in 1969. However, when comparing Botswana to South Africa, Botswana currently hosts the smallest number of refugees. UNHCR indicates that Botswana only had 2986 refugees in 2010 and 249 asylum seekers compared to South Africa's 58 000 refugees and about 172 000 asylum seekers respectively and yet the country (Botswana) continues to maintain an encampment policy. When looking at the numbers one might be inclined to believe that it would be easier for Botswana to promote local integration than South Africa.

In contrast to South Africa which only ratified the UN Convention on Refugees in 1996 after the transition to democracy, Botswana ratified the convention in 1969. One would think that with the low numbers of refugees and the fact that the country had committed itself to the international instruments on refugees long before South Africa, Botswana would consider local integration since it is one of the durable solutions proposed by the Refugee Convention.

South Africa entered the democratic dispensation at a critical time in terms of international politics. The early 1990s were characterised by the end of the Cold War which sparked political and ethnic conflicts throughout the world, increasing mass migrations on a global scale'.<sup>61</sup> It has been noted that, 'one of the defining characteristics of the post-Cold War era

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,<sup>60</sup> Polzer, T. 2008. "Negotiating Rights: The Politics of Local Integration". Forced Migration Studies Programme Working Paper Series 41

<sup>61</sup> Barnett, L. 2002. "Global Governance and the evolution of the International Refugee Regime." *International Journal of Refugee Law* 14(2/3), p239

has been the growing saliency of international migration in all areas of the world.<sup>62</sup> The end of the Cold War also brought about the end of many of the proxy wars that had been fought which mainly played themselves out in the African continent. However, the post-Cold war period has further brought to the surface issues of “group identity along ethnic, religious or communal lines” and these have become “rallying points pitching one community against the other”<sup>63</sup> and thus effectively ensuring the displacement of more people from the affected areas. The camp vs local integration debate is the basis of this research as I sought to establish why South Africa favoured local integration.

### 2.3.3 South African Foreign Policy:

Foreign policy is a sub-division of international relations. Foreign Policy can be defined as ‘the sum of official external relations conducted by an independent actor (usually a state) in international relations.’<sup>64</sup> This includes bilateral/multilateral relations with regional and international organisations. Foreign policy is further defined as ‘the sum total of all activities by which international actors act, react and interact with the environment beyond their national borders.’<sup>65</sup>

It is important to note that whilst foreign policy is usually the preserve of governments, they are not the only actors in foreign policy. Foreign policy is a diverse international relations field that involves a whole host of actors. These include, various government departments (paramount among these is the Department of International Relations and Cooperation), the president and deputy president of a country, parliament, the intelligence community, civil

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<sup>62</sup> Castles, S. and Miller, M. ‘Introduction’. in *The Age of Migration: International Population Movements in the Modern World*. 2003. London: Palgrave

<sup>63</sup> Ogata, S. “Refugee Crises in Africa: Challenges and Solutions” Address by Mrs Sadako Ogata, United Nations High Commissioner for Refugees, to the Parliament of the Republic of South Africa, Cape Town, 25 March 1997. <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3ae68fbcc&query>

<sup>64</sup> Hill, C.2003. *The changing politics of foreign policy*. Palgrave MacMillan: Hampshire, p3

<sup>65</sup> Vale, P. and Mphaisha, C.J.J. ‘Analysing and evaluating foreign policy’ in Nel, P. and McGowan, P.J. **Power, Wealth and Global Order: An International Relations Textbook for Africa (1999)**, University of Cape Town Press: Rondebosch, p89

society and the international institutions and community.<sup>66</sup> This research has focused on three of these actors, namely, the bureaucrats within government involved in the decision-making process, the international community and institutions (particularly the role of norms and standards in influencing state behaviour) and domestic actors (including civil society and political parties).

In order to understand the role played by South Africa's foreign policy in choosing a non-encampment policy, it is important that one looks at the different time periods of South Africa's foreign policy. For the purposes of this research, I define foreign policy as the strategies that South Africa uses to promote the country's relations with the international community. Landsberg defines foreign policy as 'a strategy or planned course of action developed by decision-makers of a state vis-à-vis other states or international entities, with the aim of achieving specific goals defined as national interests.'<sup>67</sup>

South African Foreign Policy can be divided into two phases, namely 1948 – 1994 and since April 1994<sup>68</sup>. This research project focuses mainly on South Africa's Foreign Policy during the transition period (1989 – 1994) and post 1994 when it was driven by the African National Congress. I have looked at different phases of South Africa's foreign policy and practice to understand how these had an impact on South Africa choosing local integration. It has been argued that 'events that took place in South Africa since February 1990 saw remarkable changes, not only in the country itself but also its foreign policy [i]n addition, South Africa was accepted back into the community of states and these necessitated a review and adaptation of the foreign policy of the country.'<sup>69</sup>

South Africa's Foreign Policy during the transition period was guided by two pillars, namely, the quest for a political solution to the internal problems of South Africa that would satisfy

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<sup>66</sup> Le Pere, G. and van Nieuwkerk, A. "Making foreign policy in South Africa" in Nel, P. and McGowan, P.J. (eds): Power, Wealth and Global Order: An International Relations Textbook for Africa, University of Cape Town Press, Cape Town, 1999, pp204-208

<sup>67</sup> Landsberg, C. 2010. Op cit. p11

<sup>68</sup> Henwood, R. 'South Africa's Foreign Policy: Principles and Problems' *Monograph* No 13, Fairy Godmother, Hegemon or Partner? May 1997 <http://www.iss.co.za/Pubs/Monographs/No13/Henwood.html>

<sup>69</sup> Ibid. p2



the international community and ensure their support and the revitalisation of the South African economy.<sup>70</sup> This period was also characterised by a number of priorities. The first priority was on building and maintaining relations with Africa with an emphasis on Southern Africa, the second priority was the expansion and consolidation of South Africa's position in other regions of the world and the third priority was to expand South Africa's relations with the UN and other intergovernmental multilateral organisations.<sup>71</sup>

Since 1994, South Africa's Foreign Policy has been based on the following commitments; human rights, specifically the political, economic, social and environmental circumstances, the promotion of freedom and democracy throughout the world, the principles of justice and international law in the conduct of relations between nations, international peace and internationally agreed mechanisms for the resolution of conflict, the interests of Africa in global affairs and expanded regional and international economic cooperation in an interdependent world.<sup>72</sup>

The Department of Foreign Affairs later developed a discussion paper on South Africa's Foreign Policy which pointed out that 'when policies are formulated in South Africa, role players should consider the manner in which a particular issue presents an opportunity for South Africa; promotes the SADC region or the Africa continent.'<sup>73</sup> South African Foreign Policy practice has continued to adhere to these principles and promote the region and Africa.

The discussion document also highlights that some of South Africa's Foreign Policy cornerstones and preoccupations included 'as far as South Africa's means allow, all efforts to alleviate the plight of refugees and children in Africa and elsewhere and particularly supporting the work of UNHCR...'<sup>74</sup> On the other hand, former Minister of Foreign Affairs, Mr Alfred Nzo had identified the 'impact of refugees and mass migration and the threat that

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<sup>70</sup> Loc cit.

<sup>71</sup> Loc cit.

<sup>72</sup> Henwood, R. Op.cit.

<sup>73</sup> Department of Foreign Affairs "South African Foreign Policy, A discussion document", June 1996.

<sup>74</sup> Henwood, R. Op.cit.

these issues pose for job creation as some of the foreign policy issues that needed to be addressed.<sup>75</sup> The above Foreign Policy commitments contributed to South Africa adopting the local integration policy for refugees as illustrated in the analysis section. During the period under review in this research, South Africa maintained a position that said its foreign policy decisions must be based on its national interests and not those of other role players.

Literature reveals that there are a number of steps in the foreign policy process. These include translating national interest considerations into specific goals and objectives; Determining national or domestic situational factors related to policy goals, Analysing the state's ability to achieve the desired results; Developing a plan or strategy to use the state's capabilities to deal with the variables in pursuit of the goals, (also known as statecraft); Undertaking the requisite actions; and Periodically reviewing and evaluating progress made towards achieving the desired results.<sup>76</sup>

In relation to the above, Hill argues that 'the politics of foreign policy are perpetually changing, depending on the country or the region and by no means in the same direction'.<sup>77</sup> As a result therefore, the foreign policy steps mentioned above do not always follow each other as countries constantly have to adjust their priorities. Hill thus argues that it is important to have 'case and country studies' of foreign policy as these provide a clearer picture of the direction being taken by foreign policy of a particular country and the trajectory it follows.<sup>78</sup>

In the South African context, it is important that we understand the different periods of its history as these have had huge impacts on the foreign policy trajectories chosen and the foreign policy practice. For instance, the pre-1994 period was characterised by the promotion of the white minority rule which resulted in South Africa being isolated internationally. The pre-1994 period also includes the transition period which brought about changes to South Africa, whilst the post-1994 period is characterised by the need to re-build the country's reputation and further participate in the international fora. The development of refugee policy is one way in which South Africa sought to participate in the international fora.

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<sup>75</sup> Loc cit.

<sup>76</sup> Landsberg, C. Op cit, .

<sup>77</sup> Hill, C. Op cit., p13.

<sup>78</sup> Ibid. p.3-4.

There are three elements of the current international context which are said to represent major changes in the international system and which have had an influence on foreign policy.<sup>79</sup> Namely, ‘the end of the Cold War, the process of globalisation; and the challenge to the Westphalia state system represented by the doctrine of humanitarian intervention.’<sup>80</sup> Hill further argues that the end of the Cold War has brought about ‘qualitative changes to international politics and thus foreign policies need to take this into account.’<sup>81</sup> Globalisation on the other hand is said to have rendered foreign policy redundant because of the interdependence nature of the world system and how this has for instance affected the movement of goods and money across borders which governments do not always have total control over.

Whilst the movement of goods and money across borders is seen as a normal part of globalisation, the movement of people between states on the other hand is an area in which competing and conflicting interests arise, engaging communities, individuals and states.<sup>82</sup> This is particularly evident when one looks at immigration and asylum policies, bilateral agreements and arrangements between states, attitudes of host communities towards those who have settled among them where aspirations of human rights activists for instance might be different from those of the state. In another instance, this is illustrated when governments try to balance the demands from the electorate whilst enacting restrictive legislation to curb perceived competition between citizens and foreign nationals.

For South Africa, the protection of refugees came at an interesting time in its history. However, not many have written on this important period of the country’s history. This was defining moment in many ways and thus deserves to be investigated. The need to investigate South Africa’s foreign policy during the period under study is borne out of the fact that the

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<sup>79</sup> Hill, C. Op cit. p11

<sup>80</sup> Loc cit..

<sup>81</sup> Ibid. p13

<sup>82</sup> Goodwin-Gill, G.S. and Newland, K. “Forced Migration and International Law” in Aleinikoff, T.A. and Chetail, V. 2003. Migration and International Legal Norms, TMC Asser: The Hague, p129

country's foreign policy and practice came under immense pressure during this period. The country was trying to re-align itself to the international community whilst trying to appease the masses at home. This on its own makes South Africa's choice of local integration during the period under review an interesting one and one that deserves attention.

The shortcomings of the literature reviewed on South Africa's foreign policy is that most (if at all) only make a cursory mention of the issue of refugees and their relationship to international relations and how South Africa pitched its foreign policy agenda in this regard. This is a glaring omission considering that the return of former South African exiles was a defining moment for the country and processes related to this should be of interest to foreign policy scholars.

#### **2.3.4 Refugee issues in Southern Africa, the African continent and globally:**

Having discussed South Africa's foreign policy during the period under study, it is important to now highlight issues related to migration in the region, continent and globally and how these relate to South Africa's foreign policy. It has been argued that 'international migration is by definition a cross-border process with transnational dimensions.'<sup>83</sup> On the other hand it is stated that South Africa was not traditionally a refugee receiving country but instead contributed to the displacement of its own citizens during the apartheid years.<sup>84</sup> However, "by January 1996, the South African government had ratified the 1951 United Nations Convention and its 1967 Protocol Relating to the Status of Refugees as well as the 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa."<sup>85</sup>

There is an argument that 'during the 1960s and 1970s, the vast majority of African refugees did not live in camps, but lived in rural settlements where they were provided with

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<sup>83</sup> Castles, 2004. p210

<sup>84</sup> Klotz, A. "International Relations and Migration in Southern Africa" *African Security Review*, 6:3, 1997 p.38

<sup>85</sup> Ibid.

agricultural tools and training and encouraged to be self-reliant.’<sup>86</sup> It is further noted that during this period, the hosting of refugees was seen as a source of pride for African states and refugees were seen to bring many benefits to the communities that hosted them.<sup>87</sup> Could South Africa have been following this practice when they adopted a non-encampment policy?

It should however, be noted that the practice of not keeping refugees in camps has reduced in the African continent and more states are adopting restrictive policies. This trend began in the 1990s as human mobility became more complex and states had to take into consideration many factors associated with receiving refugees including security concerns.<sup>88</sup> This change in the reception of refugees was also a concern to UNHCR as evidenced by this statement from the then High Commissioner, Sadako Ogata “...The traditional African hospitality towards refugees is waning in several parts of the continent. Genuine refugees have been rejected at borders, which in some cases has resulted in immediate violent death.”<sup>89</sup>

There are three reasons that African states give for adopting restrictive policies. Namely, ‘the scale and enduring nature of the [refugee] problem, the sheer number of refugees on African states’ territory makes the problem simply too big for their limited resources and state capacity;’ the lack of assistance from the international donor community or burden sharing and security concerns.<sup>90</sup>

Rutinwa further notes that asylum and refugee policies in Southern Africa have gone through three generations. Namely; first was the absence of refugee specific policies; followed by introduction of refugee specific laws and thirdly protection oriented refugee policies encompassing international instruments.<sup>91</sup>

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<sup>86</sup> Milner, J. 2010. Refugees, the State and the Politics of Asylum in Africa, [http://www.allacademic.co./meta/p416661\\_index.html](http://www.allacademic.co./meta/p416661_index.html)

<sup>87</sup> Milner, J.

<sup>88</sup> See Milner, 2010; Rutinwa, 2001, Adepoju

<sup>89</sup> Ogata, S. Speech to the Parliament of the Republic of South Africa, 1997

<sup>90</sup> Milner, Op cit.

<sup>91</sup> Ibid

During the period under review in this study, many of the refugee flows in the SADC region were mainly as a result of South Africa's destabilisation policy which brought about many a conflict in the region. Literature has shown how South Africa's destabilisation policy led to the displacement of thousands of people in the region. Literature has further covered the immigration history into South Africa including the situation of Mozambican refugees, however, very little has been covered on the local integration policy of the country hence this study.

### **2.3.5 International norms and standards and decision-making about refugee policy:**

Refugee law and policy also have a long history and can be traced back to the end of World War II. The 1951 Convention on the Status of Refugees (Refugee Convention) provides the basis for the protection of refugees in the world and further provides a definition of who is a refugee. The main defining factor for a refugee is that a person must have fled persecution from their countries of origin. Article 1 (2) of the Refugee Convention defines, a refugee as:<sup>92</sup>

However, due to the fact that the convention was mainly concerned with refugees from Western Europe, a Protocol to the 1951 Convention was developed in 1967. This protocol extended the category of refugees to include refugees from other regions of the world and did not put a time limit covering those fleeing persecution.

These instruments also lay down responsibilities of the United Nations High Commissioner for Refugees (UNHCR). For instance, High Commissioner's primary responsibility is 'to provide international protection to refugees and by assisting governments, to seek permanent solutions for the problem of refugees.'<sup>93</sup> The UNHCR's protection functions specifically

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<sup>92</sup> '...[someone who] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return to it.

<sup>93</sup> Statute of the United Nations High Commissioner for Refugees

include promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto'.<sup>94</sup> In terms of UNHCR's role of assisting governments to seek permanent solutions for the problem of refugees, UNHCR usually consults first with the government in question to determine the kind of support they require in order to deal with the refugee issue in their territory. In the case of South Africa, the government requested support based on the local integration policy.

It is argued that 'international events, structures, and processes may have direct effects on policy outcomes or they may shape them indirectly through their impact on domestic structures and further that few other domestic policy issues are as transnational in their subject matter as refugee policies'.<sup>95</sup> Literature further highlights that the international refugee regime may have an influence on the policy-making of a host country. Refugees have been a political issue since the first refugees appeared in Europe after the end of World War II. Currently many governments in the West are closing their borders and exporting asylum management to sending and/or countries of transit to manage asylum seekers. The protection of refugees is currently at cross-roads.

The nature of the international refugee regime has implications for UNHCR's role of protecting refugees and particularly its durable solutions. The three durable solutions promoted by UNHCR are repatriation, local integration and resettlement. Repatriation happens when refugees go back to their home countries when the conditions that had made them to leave had improved, for instance, when hostilities have ceased and there is some peace often gained through signing of peace agreements by warring parties. Resettlement is when refugees are relocated to a third country from the country of their asylum. Resettlement is currently mainly being conducted from the developing world to Western countries with the intention of assisting refugees in rebuilding their lives. However, with the increasingly shrinking asylum space, one wonders how long will this option remain open to those refugees who deserve it. In the early 1990s, Western governments were still open to the notion of

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<sup>94</sup> Goodwin-Gill, G. 'Convention relating to the Status of Refugees Geneva, 28 July 1951, Protocol relating to the Status of Refugees, New York, 31 January 1967', <http://untreaty.un.org/cod/avl/ha/prsr/prsr.html>

<sup>95</sup> Jacobsen, K. (1996) 'Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes', *International Migration Review*, Vol. 30, No.3, Autumn 1996, p.662

resettlement. However, with the increase in globalisation, terrorism, security concerns, the global financial crisis, this noble area of refugee protection is increasingly being threatened.

Refugee protection in Africa is also safeguarded by the 1969 Organisation of African Unity Convention governing the Specific Aspects of Refugee Problems in Africa (OAU Convention). This convention which is specific to the African context extended the UN definition by including more grounds for granting refugee status indicating that 'the term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.'<sup>96</sup>

In South Africa, it is argued that the South African government's policies under apartheid caused countless numbers of people to flee the country as refugees in neighbouring countries and further abroad.<sup>97</sup> This however, did not stop Mozambican refugees from settling in the rural parts of the former homelands in the early 1990s despite not being formally recognised as refugees by the then government.<sup>98</sup> The transition to democracy in 1994 brought in its wake a gradual flow of refugees to South Africa who were fleeing persecution and civil strife and thus sought protection in South Africa.

It is further noted that after the repatriation programme of Mozambican refugees, a Passport Control Instruction No 73 of 1994 was issued by the South African Department of Home Affairs (DHA) which provided broad guidelines by which the department would receive and

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<sup>96</sup> Organisation of African Unity/African Union: Convention governing the specific aspects of refugee problems in Africa, [http://www.africa-union.org/Official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/Refugee\\_Convention.pdf](http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Refugee_Convention.pdf)

<sup>97</sup> Van Garderen, J and Jaichand, V 'Preface: Perspectives on Refugees Protection in South Africa' in Handmaker, J. et al (eds)(2001): Perspectives on Refugee Protection in South Africa, Lawyers for Human Rights, p.5

<sup>98</sup> Polzer, T. "Adapting to Changing Legal Frameworks: Mozambican Refugees in South Africa – An Historical Overview". *International Journal of Refugee Law* 19(1): 2007, p



process applications for political asylum.<sup>99</sup> This and the agreements mentioned above formed the basis for the reception and protection of refugees in South Africa and are the focus of this research project.

In recent years, many governments have adopted or are moving towards adopting more stringent immigration and refugee policies. South Africa is also currently reviewing both its Immigration and Refugees Acts. Proposed amendments to both these pieces of legislation indicate a move towards more stringent provisions than what they currently are. For instance, Section 23 of the Immigration Act of 2002 which is about transit permit has in terms of the current Act been valid for fourteen days but the proposed amendments reduces this number to only five days for an asylum seeker to approach the nearest Refugee Reception Office.

Foreign policy process is a process of decision-making.<sup>100</sup> In terms of decision-making models in refugee policy, there are a number of models that have been proposed in explaining how decisions are taken when deciding on refugee policy. One of the key elements that assists states in making decisions on refugee policies is to look at the international legal framework that guides them. Among these are the many conventions and treaties that states have signed and/or ratified. Some of the key international instruments that states might consider when deciding on refugee policy are the 1949 Universal Declaration for Human Rights, 1951 Convention on the Status of Refugees and its 1967 Protocol, the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Inhuman and Degrading Treatment, the International Covenant on Social and Cultural Rights.

States are also informed by regional and sub-regional agreements that they may sign with countries from the same region. In the case of South Africa, the country is also guided by the Organisation of African Unity (OAU) convention on Issues Specific to refugees in the African continent. In this regard, the definition of a refugee in the South African context encompasses elements of both the UN Convention and the OAU definition thus defining a refugee in Section 3 of the Refugees Act 130 of 1998 as '[a person who] firstly, owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality,

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<sup>99</sup> Ibid

<sup>100</sup> Goldstein, J. (2004): *International Relations* (5<sup>th</sup> edition) Longman: New York, p.157

political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or secondly, owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either a part of the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere;...<sup>101</sup>

Literature indicates that in some regions of the world like in the United States, “refugee policy was consciously and explicitly a handmaiden of foreign policy.”<sup>102</sup> This therefore dictates how countries respond to refugee flows from particular countries depending on their relations with them. Important to note in this regard is the role of the international refugee regime which has dictated how refugees are treated globally and particularly the politics associated with their presence. A critical issue raised by literature relates to South Africa’s past and the fact that some of the people who were in government during the period being reviewed by this research spent years in exile but at the same time acknowledge that some did not. This might at times cause tensions between the two groups. For instance,

The ANC for example spent three decades in exile working with international organisations and building diplomatic ties... [however],... not all members of the new government spent those years in exile, most notably unionists, [as a result] many divisions within the liberation movement are now played out on different grounds [and] immigration policy has emerged as one of these contested terrains.<sup>103</sup>

This research has shown that some within government do not take kindly to being informed that when developing laws for refugees they should remember that they were once refugees themselves. See comments by Lindiwe Sisulu later in the report.

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<sup>101</sup> Refugees Act, 130 of 1998, p6

<sup>102</sup> Newland, K. ‘Impact of US Refugee Policies on US Foreign Policy: A case of the Tail Wagging the dog?’ <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=229>

<sup>103</sup> Klotz, A. ‘International Relations and Migration in Southern Africa’ *African Security Review*, 6:3, 1997, p.38

### 2.3.6 Freedom of movement:

A discussion on camps or local integration calls for some comments on the right to freedom of movement. The right to freedom of movement is guaranteed in many of the international treaties. For instance, the Universal Declaration of Human Rights, Article 13, stipulates that ‘everyone has the right to freedom of movement and residence within the borders of each state.’<sup>104</sup> Many of the governments which have chosen encampment as a policy for refugee settlement made reservations on the freedom of movement clause when they signed and/or ratified the UN Convention on Refugees and its Protocol.

The issue of freedom of movement was explored in this research particularly in relation to South Africa’s constitutional provisions and the fact that when they ratified the Refugee Convention, no reservations were made on the freedom of movement clause. Section 18 of the Bill of Rights in the South African Constitution of 1996 states that ‘everyone has the right to freedom of association’ and Section 21(1) states that ‘everyone has the right to freedom of movement.’<sup>105</sup> These two sections of the Constitution are further explored under Chapter 4. It is important to note that both these provisions refer to ‘everyone’ which means foreign nationals and in this case refugees are also covered by these Constitutional provisions.

The reviewed literature has further identified the importance of studying causal links between domestic structures and foreign policy decisions.<sup>106</sup> It is stated that ‘when we are puzzled by a happening in foreign affairs, the source of our puzzlement is typically a particular outcome and in searching for an explanation, one typically puts himself in the place of the nation, or national government confronting a problem of foreign affairs and tries to figure out why he might have chosen the action in question.’<sup>107</sup>

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<sup>104</sup> United Nations Universal Declaration on Human Rights,

<sup>105</sup> The Constitution of the Republic of South Africa , 1996, p.9-10

<sup>106</sup> Jacobsen, J.K. ‘Are all politics domestic? Perspectives on the integration of comparative politics and international relations theories’ *Comparative Politics*, Vol 29, No 1 (October 1996), pp 93 - 115

<sup>107</sup> Allison.: (1971) Essence of Decision: Explaining the Cuban Missile Crisis, Little, Brown and Company: United States of America, p.2-3

While freedom of movement as a right within a state territory is guaranteed in international law, “freedom of movement across borders as a right cannot be found in international human rights instruments, [but] the general concept of freedom of movement finds its expression through the right to leave any country and to return to one’s own country.”<sup>108</sup>

The right to leave one’s own country can be found in multilateral instruments relating to human rights both at the international and regional levels.<sup>109</sup>

The right to freedom of movement is guaranteed under Article 13 (1) of The Universal Declaration of Human Rights which states that, ‘everyone has the right to freedom of movement and residence within the borders of the state’. This is further supported by Articles 12(1) and (2) of the International Covenant on Civil and Political Rights which state that “everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence” and “everyone shall be free to leave any country, including his own” respectively. The ‘everyone’ in these instruments also include foreigners in the country of their residence. Notwithstanding the above provisions on freedom of movement, Chetail argues that ‘freedom of movement across borders as a right cannot be found in international human rights instruments.’<sup>110</sup>

However, while the UDHR ‘proclaims the right to leave and return in absolute terms without mentioning any limitations.’<sup>111</sup> Article 12(3) of the Covenant highlights the limitations to the right to freedom of movement in stating that “the above-mentioned rights [Article 12 (1) and 12(2)], shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order...public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present

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<sup>108</sup> Chetail, V. Op cit. p47

<sup>109</sup> Ibid.

<sup>110</sup> Chetail, V. “Freedom of Movement and Transnational migrations: A human rights perspective” in Aleinikoff, T.A. Migration and International Legal Norms, TMC Asser Press: The Hague, The Netherlands, 2003 p47

<sup>111</sup> Ibid.

Covenant”.<sup>112</sup> Provisions like these are sometimes used by state parties to deny migrants entry into their territory. The challenge is how to balance these limitations with the protection of refugees.

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<sup>112</sup> “International Covenant on Civil and Political Rights”, The Core International Human Rights Treaties, Office of the High Commissioner for Human Rights: Geneva, 2006, p.29

## *Chapter 3: Methodology*

### **3.1 Introduction**

In research, methodology refers to ‘the process and procedures of the research.’<sup>113</sup> This means that a researcher needs to clearly articulate how they are going to conduct their research and highlight the theoretical framework within which their research will be situated. I have used the qualitative method of enquiry for this study relying mainly on archival information and semi-structured interviews. In qualitative research, the researcher is the primary “instrument” of data collection and qualitative analysis.<sup>114</sup> Social sciences employ various methods of research.

This study is situated within constructivism which is a post-positivist approach to social enquiry. The research sought to establish the causal relationship between foreign policy and domestic (refugee) policy with decision-makers as the causal mechanism. Particularly important to note was the context within which the decision-makers operated, that is, the transition and newly democratised periods for South Africa also shaped how the causal mechanisms worked. It has been reported that “credible causal social scientific explanation can occur if and only if researchers are attentive to the interaction between causal mechanisms and the context in which they operate.”<sup>115</sup>

A causal mechanism can be defined as the link between the independent variable and dependent variable.<sup>116</sup> Causal mechanisms can also be defined as “analytical constructs that

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<sup>113</sup> Ponterotto, J.G. ‘Qualitative research in counselling psychology: A primer on research paradigms and philosophy of science’, *Journal of Counselling Psychology*, 2005, Vol.54, No. 2, p132

<sup>114</sup> Johnson, R.B. “Mixed Methods of Research: A Research Paradigm whose time has come”, *Educational Researcher*, Vol. 33, No.7, p18

<sup>115</sup> Falletti, T. and Lynch, J.F. “Context and Causal Mechanisms in Political Analysis” in *Comparative Political Studies*, 2009, 42, p 1144

<sup>116</sup> Ibid. p1146

provide hypothetical links between observable events.”<sup>117</sup> By showing how the decision-makers had to take into account the changing domestic and global environment within which South Africa was positioned during the period under study, I am able to show that, the beliefs and actions of decision-makers were the causal mechanisms in this case but also that this was facilitated by the context within which they were operating. Decision-makers are those key people who were part of the negotiations between South African government and UNHCR starting with the 1991 MoU and in the post 1994 period, decision makers in this regard include cabinet and parliament members, some departmental officials, officials stationed abroad at embassies particularly Geneva in Switzerland, civil society organisations as far as their positions on the issues were concerned.

This research has explored all three potential explanatory factors identified under the literature review to determine whether they had an impact on South Africa’s decision to adopt a non-encampment policy for refugees. Having three explanatory factors to determine whether they had causality on the dependent variable (refugee policy) ensured that selection bias was eliminated. Exploring multiple explanatory factors also assisted in determining which of them had a stronger impact on the dependent variable which then resulted in the findings summarised in the conclusion. In order to show causality and because this is a historical study of decision-making, I have employed the process tracing method. Process tracing is the research method where the researcher “explores the chain of events or the decision-making process by which initial case conditions are translated into case outcomes.”<sup>118</sup> I used process-tracing because it is said to also find a place in the constructivist approach.<sup>119</sup>

Data for this research was gathered in two ways. Firstly information was collected from primary sources including archives of parliamentary discussions contained in the Debates of

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<sup>117</sup> Hedstrom, P. and Swedburg, R. 1998. “Social mechanisms: An Analytical Approach to Social Theory” quoted in George, A. and Bennett, A. Case Studies and Theory development in the Social Sciences, MIT Press: London, 2005, p.135

<sup>118</sup> Van Evera, S. . Guide to Methods for Students of Political Science, Cornell University Press: Ithaca and London, 1997,p.64.

<sup>119</sup> George, A.L. and Bennet, A. Case Studies and Theory Development in the Social Sciences, MIT Press: Cambridge, MA, 2005, p.206.

Parliament (Hansard) for the period under study. In this regard, I reviewed parliamentary discussions where the Department of Home Affairs and Foreign Affairs were either presenting or part of the discussions because most references to foreign nationals (including refugees) and migration related issues were mainly raised during presentations by these two departments. Members of Parliament present at these discussions represented the various political parties that were (some are still currently) in existence during the period under study. Pre-1994 members also represented the different Houses which were mainly divided along racial lines, namely, House of Representatives and House of Delegates. Parliamentary discussions ranged from the amendment to the Aliens Control Act to ensure more control of illegal migration into South Africa; the plight of refugees who came to South Africa both from Mozambique and Zimbabwe; adoption of the Refugee Bill and vote debates to name a few. I also reviewed minutes, official communication (letter and memos) at the Department of Foreign Affairs, UNHCR official records and newspaper clippings. Whilst I had also made requests for access to official documents through the Department of Home Affairs, I was not able to access these. Many but not all of the official documents that I was granted access to both by DIRCO and UNHCR possessed confidential information which was aimed for internal use only at the time these were written but which are now available for public.

### **3.2 Documentary analysis:**

Having initially experienced challenges with accessing official records and minutes from UNHCR, DIRCO, DHA, I was eventually granted access to the UNHCR (Geneva) and DIRCO records. My intention was to study minutes and reports of meetings that were held between South Africa, UNHCR and other actors study cabinet memos with cabinet decisions on the encampment issue. . With regards to the minutes and records of meetings between the government of South Africa and UNHCR, I was informed by UNHCR regional office in Pretoria late 2011 and early 2012 that they did not have records of these meetings. However, I eventually managed to access some of the official documents from the UNHCR Geneva office after I had made requests to them.

UNHCR Pretoria and the South African Archives advised me to contact the archives section at the Department of International Relations and Cooperation (DIRCO) as they might have the documents I was looking for. I contacted DIRCO from late 2011 and was initially



informed that I could not access the information because of the twenty year limitation period which precludes them from releasing documents to the public. However, after explaining further explaining the reasons for my research, I was eventually granted access to the records in their archives.

Due to the fact that even with the data that I was able to access there were some gaps, I then complimented my data collection by tracing the process through studying the agreements, analysing parliamentary discussions and studying the Green and White papers and the consultative processes related to them. Therefore the main method used to collect data was to study primary material in the form of minutes, reports and memorandum between the South African government (mainly through Department of Foreign Affairs), UNHCR, ANC and other parties who were involved in the decision-making process.

I also studied the agreements that South Africa has signed with the United Nations High Commissioner for Refugees (UNHCR) particularly the 1991 Memorandum of Understanding, the 1991 Status Agreement and the 1993 Basic Agreement between the Republic of South Africa and UNHCR which was signed on 06 September 1993. I managed to access one cabinet memo related to this decision from a Master's thesis in the library and is attached as an Annexure and parliamentary debates.

I further studied the ANC Policy documents notably their Foreign Policy Perspectives document which also outlines how the party will tackle the issue of refugees. And the newly released Discussion Document on Peace and Stability which has implications for refugee protection in the country. I also studied documents related to the Multi-party negotiations particularly the discussions around constitutional rights as these also addressed the issue of freedom of movement.

Lastly, I scanned a number of newspapers to trace whether the signing of the agreements and the choice of non-encampment was ever reported on in the media. Most reports I came across were addressing the Mozambican repatriation process and covering political developments in the country. The Weekly Mail and Guardian also covered a story on the ANC's future foreign policy, discussed later in the report.

Literature indicates that whilst documentary research is usually considered secondary data, to those doing historical research, these “are regarded as primary sources if they are the original records of the events rather than re-descriptions of them by other historians”.<sup>120</sup> In the case of this study most of the documents were original records and as such are my primary data.

I then studied these documents with the aim of tracing the decision-making process with regards to non-encampment and refugee policy development. In studying these documents, I was looking for key words that were relevant for the process tracing. These words included foreign policy, refugee camps, UNCHR, decision-making, local integration, refugee settlements.

### **3.3 Semi-structured interviews:**

The second method of gathering data that I used was the semi-structured interviews. Semi-structured interviews were conducted with some of the people who were involved in this process. Having initially experienced difficulties in identifying and finding the actual decision-makers, I opted to interview those who were involved with the decision-making process both pre and post 1994 as these people had a lot of knowledge about what had happened. Thus it is argued that qualitative research methods “provide understanding and description of people’s personal experiences of phenomena.”<sup>121</sup> In the end however, I was able to trace one of the chief negotiators from UNHCR, Mr Kallu Kalumiya who had first-hand information about the negotiation and decision-making processes. He was initially Legal Counsel for UNHCR and later became the Head of UNHCR Mission in the early 1990s. From November 2011, I contacted some of the possible people to be interviewed and received confirmations for interviews in January 2012 as many were busy with rounding up work as it was towards the end of the year. The interviews were guided by the questionnaire that I developed for this study, attached as Annexure D.

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<sup>120</sup> Hall, R. 2008. *Applied Social Science Research: Planning, design and conducting real-world research* (updated version), Palgrave MacMillan: South Yara, p.208.

<sup>121</sup> Johnson, R.B. et al. Op cit. p18

In this regard, the people who had been identified beforehand were contacted again to confirm our appointments for January 2012. The purpose of conducting interviews was to be able to gather information on the role that these participants played in the decision-making process and to determine whether there was any additional information they could share with me with regards to this project particularly in light missing information from DHA that I could not access. Those interviewed were civil society organisations representatives, government official and a former UNHCR representative who was part of the actual decision-making process in the early 1990 until 1994. A questionnaire was developed for the semi-structured interviews. Two interviews were conducted face to face and two were telephone interviews. The decision maker who used to work for UNHCR is based in Kampala Uganda and it was not going to be possible to have a face to face interview with him.

I visited two of the interviewees at their places of work as this arrangement suited their schedules. The benefit of using qualitative research methods is that they are “responsive to local situations, conditions and stakeholder needs.”<sup>122</sup> The participant consent form was explained to them before they signed it and all were advised that they could stop the interview anytime they feel they are no longer able to assist by commenting or became uncomfortable. Many of them did not have a problem with commenting but one respondent rather preferred to remain anonymous for this final report.

Two telephonic interviews were conducted. The first with an official from the Department of Home Affairs who has been closely working on the policy issues and one with a former UNHCR Head of the Africa Desk who was involved in negotiations with the SA government from 1980s to 1994 after the democratic elections.

With regards to the presentation of the findings, it is important to note that due to the fact that some of the participants interviewed for this research requested to remain anonymous, I have used codes where quotes from the interviews have been used. The codes are arranged in alphabetical order. Also in order to further protect the identity of some of the participant, I have left out any identifying information for them.

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<sup>122</sup> Ibid.

This research project was not without challenges as noted above. It has been argued that analysing foreign policy decision-making is often difficult because sometimes, the decision-makers do not want to give access to their records as they do not wish people to know what had been discussed before making the decision.<sup>123</sup> The challenges I experienced were related to gaining access to the documents which was mainly later resolved. However, gaps remained where for instance I was not able to get information from Home Affairs.

### **3.4 Limitations:**

It has been noted that “anyone undertaking a work of historical investigation is left finally feeling unsatisfied [,] there always seem to be so many documents unseen, so many people not interviewed, so many points of view missing”<sup>124</sup> I share these sentiments deeply. There were so many documents I would have loved to study and people I would have loved to speak to but because of all the challenges I encountered in trying to get access to some of the primary documents this was not possible. I also had a challenge because despite the fact that I was eventually granted access to the Archives by DIRCO, many of the official documents were written in Afrikaans a language I am not fully conversant with. Due to the fact that these documents were available so late, I did not have an opportunity to have them translated. However, despite these limitations, the primary sources I was able to access were invaluable and adequate to answer my research question. The semi-structured interviews that I conducted also were very important in providing valuable information and data source for this research.

The sample size for my research was quite small and it might be argued that this was not a representative sample. However, the main method of data collection method for this research was the archival information and the interviews were used as a secondary method to supplement the documentary analysis. Those interviewed were identified through their work on migration and positions held within the various institutions they were aligned with during the period of the study.

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<sup>123</sup> Weil, H.M. “Can bureaucracies be rational actors? Foreign Policy Decision-making in North Vietnam” *International Studies Quarterly*, Vol 19, No 4, December 1975, p

<sup>124</sup> Smith, T.R. 2003. “The making of the 1998 Refugees Act: Consultation, Compromise and controversy”, (MA Thesis) University of the Witwatersrand: Johannesburg, Preface, p. v

## *Chapter 4: South African Foreign Policy and Foreign Policy Practice*

### **4.1 Introduction:**

This study looks at the intersection between foreign and domestic policies. The focus is on South Africa's foreign policy and its implications for domestic policy particularly in the area of refugees. The chapter looks at two periods of South Africa's foreign policy, namely, the pre-1994 and post-1994. This chapter also highlights challenges faced by South Africa post 1994 in trying to frame a foreign policy agenda based on principles of human rights and democracy while also promoting a regional and continental agenda globally. The chapter further highlights how South Africa has responded to regional and continental migration in pursuit of its foreign policy objectives. Reference will also be made to different presidents of South Africa and how they have promoted South Africa's foreign policy. Hill highlights that sometimes foreign policy is determined by decision-makers involved in foreign policy saying 'to some extent decision-makers themselves decide what foreign policy is by what they choose to do...' <sup>125</sup>

Any discussion on migration involves foreign relations among states. This is because 'states [...] have sought to manage migration in the interests of both their populations and of friendly relations with other states.' <sup>126</sup> It has been argued that no issue is as cross cutting as immigration. <sup>127</sup> This is because immigration involves two or more countries, namely, sending, transit and receiving countries. This research project focused on both the 1989 – 1994 and 1994 – and beyond periods of South Africa's Foreign Policy. South Africa's transition coincided with major changes in global politics including the end of the Cold War, the disintegration of the Soviet Union, the dismantling of the Berlin Wall and globalising.

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<sup>125</sup> Hill, C. 2003, Op cit. pp3-4

<sup>126</sup> Aleinikoff, V Op. cit. p1

<sup>127</sup> Castles, S and Miller, M. 'Introduction' in *The Age of Migration: International Population Movements in the Modern World*. 2003. Palgrave: London, p.10.

However, having noted the importance of case and country studies of foreign policy, Hill further highlights the importance still of understanding the broader international system within which individual countries operate. He thus states that, ‘foreign policy exists in the space created by states’ existence and by their very lack of omnipotence. Its rationale is to mediate the impact of the external on the domestic and to find ways of projecting a particular set of concerns in a very intractable world.’<sup>128</sup>

It is often argued that ‘...foreign policy is made and executed in the realm of contingent events...’<sup>129</sup> In the case under review, the signing of the 1993 Basic Agreement with UNHCR and the decision taken not to keep refugees in camps coincided with South Africa’s transition and the country’s desire to be seen to be conforming to international standards. As noted earlier in this report, the argument against the warehousing of refugees was already gaining wide support during the early 1990s and this continues to this day.

The common argument when one looks at the relationship between foreign and domestic policy is that, domestic policy shapes foreign policy in direct ways and could therefore place major constraints on how foreign policy can be manoeuvred and thus state identity is an important influence on foreign policy and a country’s standing.<sup>130</sup> On the other hand, it is argued that because foreign policy arises out of a domestic context, it thus can never really be removed from it.<sup>131</sup> The other side of this argument is that foreign policy can impact and determine domestic policy. So there is always that linkage between what a state’s aspirations domestically are with how it projects that in the international arena whilst at the same time, the state’s aspirations internationally can influence its behaviour domestically including in the policy fields. In the case of asylum, it has been argued that ‘the granting of refugee and

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<sup>128</sup> Hill, C. 2003, Op cit. p4.

<sup>129</sup> Johnston, 2001. p11

<sup>130</sup> Landsberg, C. Op cit. 15

<sup>131</sup> Hill, C. Op cit. p37

asylum status is more than a humanitarian act and that doing so has important foreign policy implications’.<sup>132</sup>

The issue of national identity often arises when dealing with states and foreign policy. States often want to project a certain identity in world affairs. The former president of South Africa (Nelson Mandela) indicated in 1993 that the central goal of South Africa’s foreign policy was to promote institutions and forces within the international system which aimed to make the world safe for diversity and that these would be achieved through democratic means.<sup>133</sup>

The conduct of foreign policy involves the promotion of a country’s national interest which is tied to national identity. Landsberg defines national interest as ‘the determinants that guide the behaviour of states vis à vis the external milieu.’<sup>134</sup> The South African Department of International Relations and Cooperation (DIRCO) on the other hand defines national interest as ‘those interests of the state, which could be categorised as core interests, which are inalienable, and whose attainment and protection is absolutely vital.’<sup>135</sup>

National interests are thus broadly defined as ‘a series of domestic vital needs, priorities and ultimate determinants that guide decision makers of a state in forming foreign policy.’<sup>136</sup> There are different types of national interests. These are the primary interests, secondary interests, permanent interests, variable interests, general interests and specific interests.<sup>137</sup> Primary interests are defined as those interests that include the protection of the

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<sup>132</sup> Salehyan, I. and Rosenblum, M.R. “International Relations, Domestic Politics, and Asylum Admissions in the United States”, in *Political Research Quarterly*, Vol.61, No. 1, March 2008, p.105

<sup>133</sup> Mandela, N. 1993. “South Africa’s Future Foreign Policy”, *Foreign Affairs*, Vol. 72, No.5, November-December 1993, p89.

<sup>134</sup> Landsberg, C. 2010. Op cit. p16

<sup>135</sup> Ibid.

<sup>136</sup> Landsberg, C. 2010. *The Diplomacy of Transformation: South African Foreign Policy and Statecraft*, Pan MacMillan: Johannesburg, p16.

<sup>137</sup> Landsberg, C. *Op.cit*, p17.

nation's physical, political and cultural identity, and survival against encroachment from the outside and it is argued that these are the interests that a nation must defend at any cost.<sup>138</sup>

No discussion of foreign policy is really complete without looking at the role-players in this field. In this regard, it is argued that one of the challenges of post-apartheid South Africa's foreign relations was the emergence of many and various actors who played ('sometimes dominant roles') in shaping, determining and finally implementing policy.<sup>139</sup> They further argue that it was the multiplicity of these actors that sometimes bring about criticism of South Africa's post-apartheid foreign policy as being incoherent.

Foreign policy under apartheid is further said to have been highly centralised and was seen as the preserve of the executive head of government and his foreign minister.<sup>140</sup> Under Mandela it focused more on promoting acceptable international norms and state building, under Mbeki due to his interpretation of the nature and state of world affairs, made him to prioritise 'developmental and transformational issues' in foreign policy during his tenure.<sup>141</sup> Under Mbeki foreign policy also looked more towards the continent and under Zuma has much influence from domestic factors.

#### **4. 2 South Africa's foreign policy during the transition period 1989 – 1994:**

South Africa's foreign policy has undergone changes over the years. Since coming to power, the democratically elected government of South Africa 'has pursued a foreign policy based on the centrality of the UN in the multilateral system.'<sup>142</sup> However, this was not always the case. The successive apartheid governments promoted discriminatory policies that resulted in South Africa being considered a pariah state.

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<sup>138</sup> Ibid.

<sup>139</sup> Le Pere and Nieuwkerk, 2004. Op. cit. p123

<sup>140</sup> Le Pere and Nieuwkerk, 1999, Op cit. p197

<sup>141</sup> Landsberg, C. 2010. The diplomacy of transformation: South African foreign policy and statecraft, p166.

<sup>142</sup> Le Pere, and van Nieuwkerk . 1999. Op.cit. p.197



South Africa's foreign policy in the period 1989 – 1994 was still very much driven by the National Party. The latter part of 1989 saw FW de Klerk being inaugurated as the State President. Landsberg argues that F.W. de Klerk's presidency was very important for the country's future as the country sought to move 'away from apartheid towards participation in a negotiated process that resulted in South Africa attaining democracy and re-joining the international community'.<sup>143</sup> While PW Botha's tenure was characterised by 'the militarisation of domestic politics and foreign policy', de Klerk's was characterised by a willingness to engage with the ANC and also seek de-isolation from the rest of the world calling for 'co-operation and accommodation'.<sup>144</sup>

The focus of de Klerk's presidency was on ending South Africa's isolation internationally and to bring about democratic change in the country, as noted above. As a result of this it has been argued that de Klerk felt compelled by a number of events to enter into negotiations that eventually led to the democratic transition. These included 'mass action within and outside South Africa, reforms in the Soviet Union, super power détente, the end of the Cold War and Western assurances to embrace negotiations'.<sup>145</sup> De Klerk and the National Party eventually relented and chose to use negotiations as a strategy to bring about changes in South Africa.

Hill notes that it is important to take cognisance of the two-way flows that come out of making a distinction between foreign and domestic policy, noting that 'foreign policy has its domestic sources as much as domestic policy has some elements of foreign influences'.<sup>146</sup> In the case of South Africa, the resistance to apartheid both at home and abroad played an important role in the eventual dismantling of apartheid.

Foreign policy is also about strategies. States often have to have some strategy of how they are going to conduct foreign relations and this is usually driven by the state president. This was the case also with de Klerk. For instance, Landsberg argues that 'as [de Klerk] grew in

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<sup>143</sup> Landsberg, C. 2010. Op cit. p9

<sup>144</sup> Ibid.

<sup>145</sup> Landsberg,

<sup>146</sup> Hill, Op.cit. p39

confidence and international stature after 02 February 1990, [he] developed three clear foreign policy objectives.<sup>147</sup> These were,

ending South Africa's international ostracism, reintegrating it into the international community and claiming maximum credit for it; 'persuading the foreign community to end sanctions and support a liberal free-market economic dispensation and thirdly, securing international support for the National Party's goal of a consociational democratic dispensation in which (white) minorities would enjoy a veto right over decision-making in a majoritarian system.'<sup>148</sup>

De Klerk thus set out to achieve the above when he took office as the state president. However, while he may have been somewhat successful in using the first two strategies, it has been argued that his desire to have a settlement based on 'group (or white minority) rights' was not successful because the ANC negotiated and settled on the basis of a 'non-racial, equal rights for everyone' basis.<sup>149</sup>

In order to demonstrate the seriousness of his desire to change the status quo, De Klerk announced the unbanning of political parties in South Africa including the ANC and many of the other liberation movements like the Pan African Congress (PAC). As a result, Landsberg states that de Klerk 'boldly articulated a new African diplomacy that aimed to boost South Africa's image as an indispensable actor across the continent'.<sup>150</sup>

De Klerk is said to have also depended a lot on Western powers for support to be able to bring about changes in South Africa. The United Kingdom and United States are said to have been instrumental in supporting de Klerk.

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<sup>147</sup> Landsberg, 2004. Op cit.p88

<sup>148</sup> Landsberg, C. 2004. The quiet diplomacy of liberation: International Politics and South Africa's Transition. Jacana Media (Pty) Ltd: Johannesburg, p.88

<sup>149</sup> Landsberg, C. Op Cit, p54

<sup>150</sup> Ibid. p60

While de Klerk played a major role in the transition and abolition of apartheid that took place in South Africa, the ANC is said to have also realised that continuing with the armed struggle when the de Klerk government was willing to negotiate was not going to be beneficial to them and conceded to engaging in negotiations. Former South African president Thabo Mbeki is quoted as having said at the time that ‘fundamentally, the decision to negotiate arose from the fact that after a protracted conflict, [they arrived] at a situation of what could be described as armed equilibrium [where] neither side (ANC and successive apartheid governments) had defeated the other...’<sup>151</sup>

After Mandela’s release there were the multi-party negotiations which ultimately resulted in an agreement to have a Government of National Unity, a new constitution and democratic elections that were held in April 1994.

During an interview with the Weekly Mail and Guardian in 1993 Thabo Mbeki noted that ‘although South Africa had no wish to dominate the region, ANC President Nelson Mandela was already involved in efforts to influence regional politics’<sup>152</sup>. This was after Mandela had paid visits to some countries in the region to re-assure them that South Africa was committed to the region as an equal player and not as the hegemon it had been under apartheid.

All this time, South Africa continued with its regional labour migration system and there wasn’t much change as far as immigration for work into South Africa was concerned. The early 1990s were also characterised by a mass influx of Mozambican refugees who had fled the war in their country. Upon arriving in South Africa, many of the Shangaan speaking refugees settled in the former homeland of Gazankulu.<sup>153</sup> Government policy at the time was not geared towards formally recognising Mozambicans as refugees and thus many self-settled among the predominantly Shangaan speaking communities. Further, because UNHCR was not formally mandated to deal with refugees from other countries at the time, it could not assist the Mozambicans.

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<sup>151</sup> Landsberg, C. Op cit. p.48.

<sup>152</sup> Louw, Chris. ‘How the ANC would handle foreign affairs’. The Weekly Mail and Guardian, September 3 to 9 1993, p.5.

<sup>153</sup> Polzer, T. 2007. Op cit. p.27.

While there was no formal attempt to recognise Mozambicans as refugees during this transition period, there was mobilization of this group (and other foreigners) to get South African Identity Documents so they could be eligible to vote in the historic 1994 elections.<sup>154</sup> The formal recognition of Mozambicans as refugees would come later with South Africa having attained democracy. This happened in 1996 through the SADC Amnesty and in 1999/2000 when the amnesty was specifically targeted at Mozambicans.<sup>155</sup> During this period the concern around undocumented migrants persisted and this resulted in the amendment of the Aliens Control Act. However, the Act still remained with gaps regarding the protection and recognition of refugees.

Parliament was also part of this whole process of changes. This is evidenced by some of the discussions that were taking place in parliament at the time. For instance, in April 1993 when the then Department of Foreign Affairs was presenting on the Appropriation Bill, the then Minister of Foreign Affairs (Pik Botha) highlighted the role South Africa was playing in the international arena and how the international community viewed South Africa.

### **5.3 South Africa's foreign policy post 1994:**

South Africa's post-apartheid foreign policy is informed and reflects the ANC's experiences as a liberation movement that fought for the freedom of the majority in South Africa. It is reported that when the ANC took over power in 1994, it was faced with the responsibility of transforming an exclusionist foreign policy and 'translate the goals of the liberation movement diplomacy into a pragmatic and principled foreign policy for South Africa.'<sup>156</sup>

This process was not an easy one for the ruling party as they had to contend with the legacy of apartheid which was still entrenched in the various structures of the state and government.

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<sup>154</sup> Ibid.p41

<sup>155</sup> Polzer, T. Ibid. p41

<sup>156</sup> Le Pere, and van Nieuwkerk, "Who made and makes foreign policy" in Sidiropoulos, E. 2004. Apartheid Past, Renaissance Future: South Africa's Foreign Policy: 1994-2004. The South African Institute of International Affairs: Johannesburg, p120.

It is further reported that '[foreign policy] decision-makers did not begin with a *tabula rasa*, there were influential legacies from the past ...and expectations from the ANC supporters of a new deal in which defence, extension and consolidation of human rights would be given pride of place in both domestic and foreign policy'<sup>157</sup>

South Africa has had four presidents since the 1994 first democratic elections, namely, Nelson Mandela, Thabo Mbeki, Kgalema Motlante and Jacob Zuma (current president-2012). Each of these presidents has brought their personalities into play in carrying out their presidential duties. Mandela is said to have been the Statesman, while Mbeki's focus was on Africa, African Renaissance and the role that the continent should be playing in international affairs. Motlante was only at the helm for a short period of time. Zuma is said to be focusing more on the domestic and developmental issues to inform foreign policy.<sup>158</sup>

What cuts across these periods is the treatment of non-nationals in South Africa. During Mandela's tenure, Chief Mangosuthu Buthelezi of the Inkatha Freedom Party became Minister of Home Affairs and sought to protect South Africa from the invasion by illegal aliens. This resulted in the amendment of the Aliens Control Act which was lauded by many as a positive step towards immigration control but criticised for vilifying refugees. Mbeki's tenure was characterised by focusing on the African Renaissance emphasizing that South Africa was part of the continent and that we needed to look to the continent to ensure its and South Africa's development. However, immigration policy under him was tightened.

Important to consider during these different periods of foreign policy practice is the location of decision-making processes. For instance, it is reported that while former President Thabo Mbeki was in power, "the epicentre of decision-making had shifted to the Union Buildings in Pretoria and that the ANC and Luthuli House [ANC Headquarters] had been relegated to marginal roles."<sup>159</sup>

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<sup>157</sup> Spence, J. "Vision and reality" in Sidiropoulos, E. 2004. Apartheid past, renaissance future: South Africa's foreign Policy 1994-2004, South African Institute of International Affairs: Johannesburg, p36

<sup>158</sup> Landsberg, C. Op.cit.

<sup>159</sup> Landsberg, C. 2010. Op.cit. p.203.

Johnston argues that there are two important things to be said about South Africa's foreign policy post the April 1994 elections which ushered a democratic dispensation for the country.<sup>160</sup> Namely, that South Africa's foreign policy has been 'preoccupied with transformation and secondly that it has been criticised for lacking coherence and consistency.' Landsberg calls this 'diplomacy of transformation.'<sup>161</sup> In supporting the above, other authors state that 'as in all other areas of public policy, the [then] incoming government of national unity (GNU), led by the ANC, was confronted with the task of reconfiguring foreign relations.'<sup>162</sup>

The ANC produced a policy document that highlights the seven principles that will guide South Africa's foreign policy post 1994. These are:<sup>163</sup> A belief in, and preoccupation with human rights which extends beyond the political, embracing the economic, social and environmental; a belief that just and lasting solutions in the problems of human kind can only come through the promotion of democracy worldwide; a belief that justice and international law should guide the relations between nations; a belief in international peace is a goal to which all nations should strive; a belief that our foreign policy should reflect the interest of the continent of Africa; a belief that South Africa's economic development depends on growing regional and international economic cooperation in an independent world and a belief that our foreign relations must mirror our deep commitment to the consolidation of a democratic South Africa.

South Africa's choice of a refugee policy is interesting in light of the above claim on the need for foreign policy decision-makers to take into account the societies to which they are

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<sup>160</sup> Johnston, A. 'Democracy and Human Rights in the Principles and Practice of South African Foreign Policy' in Broderick, J.; Burford G. and Freer, G. (eds) South Africa's Foreign Policy: Dilemmas of a New Democracy. Palgrave: Hampshire. 2001, p.11.

<sup>161</sup> Landsberg, C. 2010. Op cit.

<sup>162</sup> Le Pere, G. and van Nieuwkerk, A. "Making Foreign Policy in South Africa" in Nel, P. and McGowan, P.J. (eds) 1999. Power, wealth and global order: An International Relations textbook for Africa, University of Cape Town Press: Rondebosch, p121

<sup>163</sup> African National Congress 'Foreign Policy Perspective in a democratic South Africa', <http://www.anc.org.za/show.php?id=230>

accountable, since at the time the 1993 agreement was signed South Africa was not really promoting democratic values nor respect for human rights. However, after 1994, refugee legislation that was developed took into account the respect for human rights aspirations of the country.

Adhering to the principles of democracy means that foreign policy cannot be left to be the preserve of only those who are in government or the state. However, in order to promote ‘the process of democratic decision-making,’<sup>164</sup> all levels of society need to be part of foreign policy making through various means. It is reported that in the case of post-apartheid South Africa, ‘foreign policy principles and priorities have been formulated and planned by multiple actors...’<sup>165</sup>

When dealing with issues of foreign policy decision-making, it is important to also look at the psychological environment and this resonates well with the assumptions of constructivism. Constructivism has this to say in relation to foreign policy, ‘to make policy... is to make decisions based on interpretations about the nature of the domestic and international environments’<sup>166</sup> This means that in making decisions, foreign policy makers base those decisions on how they perceive the world around them and the implications thereof. The role played by the personality of the president is important in foreign policy. This section has highlighted South Africa’s foreign policy principles and practice during the period under study and beyond. The section has further highlighted how foreign policy decisions have an impact on domestic policy.

In extending UNHCR’s mandate from dealing with former South African refugees and exiles and allowing them to deal with asylum seeker and refugees from other countries, South Africa was implementing foreign policy at a domestic level. Refugee issues are a foreign policy issue as explained earlier.

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<sup>164</sup> Vale, P. and Mphaisha, C.J.J. in Nel, P. and McGowan, P.J. (eds) 1999. Power, wealth and global order: An international relations textbook for Africa, University of Cape Town Press: Rondebosch, p90

<sup>165</sup> Le Pere, G. and van Nieuwkerk, A. Op cit., p202

<sup>166</sup> Vale, P. and Mphaisha, C.J.J. “Analysing and evaluating foreign policy” in Nel, P. and McGowan, P.J. (eds) 1999. Power, wealth and global order: An international relations textbook for Africa, University of Cape Town Press: Rondebosch, p94

## ***Chapter 5: International Standards and norms and foreign policy practice***

### **5.1 Introduction:**

International legal norms and standards play an important role in guiding governments when making decisions on refugee issues. These standards and norms apply to a wide range of issues including states' assertion to the conventions, the creation of an enabling environment, governments developing legislation to deal with refugees and the rights to be accorded thereto. There is a well-developed international framework for promoting the protection of refugees internationally. This chapter details international norms and standards as laid down by international conventions and treaties with particular emphasis on decision-making and policy development on refugee and immigration issues. Particularly important for this study is the role of United Nations organisations in norm socialisation and compliance. The role of the United Nations High Commissioner for Refugees (UNHCR) and the international refugee regime will be explored in detail in this chapter. This chapter will further highlight the right to freedom of movement and how this plays an important role when governments are deciding whether to adopt an encampment or local integration policy for the settlement of refugees in their territories. The emphasis is of course on how this relates to South Africa's foreign policy practice in the period under study.

### **5.2 International norms:**

Norms can be defined as standards of appropriate behaviour for actors with a given identity.<sup>167</sup> There are different kinds of norms. The first are the regulative norms, which order and constrain behaviour.<sup>168</sup> The second are constitutive norms, which create new actors, interests or categories of action.<sup>169</sup> The third are called evaluative or constitutive norms and these are important when analysing state behaviour in the international system though they

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<sup>167</sup> Finnemore, M. and Sikkink, K. "International Norm Dynamic and Political Change", in *International Organisation*, Vol. 52, No. 4, Autumn 1998, p891.

<sup>168</sup> Ibid

<sup>169</sup> Ibid.



are said to have received very little attention in research.<sup>170</sup> Looking at the role played by norms in the case of South Africa when deciding on a refugee settlement policy, it is important to note that “because norms involve standards of appropriateness or proper behaviours, both the inter-subjective and evaluative dimensions need to be addressed”.<sup>171</sup>

Norms emerge within a particular context. It is noted that despite the fact that there has been little theoretical work focusing mainly on the process of norm building, most studies on norms highlight the role of “human agency, indeterminacy, chance occurrences, and favourable events, using process tracing or genealogy as a method”.<sup>172</sup> This then means there is a need for “norm entrepreneurs and organisational platforms from which entrepreneurs act” for norm creation to succeed.<sup>173</sup> In relation to the development of asylum/refugee policies and norms, it has been argued that ‘the formulation of refugee policies involves a complex interplay of domestic and international factors at the policy-making level and illustrates the conflict between international humanitarian norms and the sometimes narrow self-interest of sovereign nation states.’<sup>174</sup>

Literature reveals that there are a number of reasons for the post-apartheid South African government ‘to be more responsive to international normative pressures than the apartheid regime’.<sup>175</sup> First among these is the ANC’s own experiences in exile working with international organisations and building diplomatic ties and saw the benefits of sanctions as a result of this engagement.<sup>176</sup> Secondly, having been a liberation movement, the post-apartheid

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<sup>170</sup> Ibid

<sup>171</sup> Ibid.

<sup>172</sup> Ibid, p896

<sup>173</sup> Finnemore, M. and Sikkink, K. “International norm dynamic and political change”, *International Organization*, 52,4, Autumn 1998, p896

<sup>174</sup> Loescher, G. “Introduction” in, Loescher, G. and Monahan, L. (eds), *Refugees and International Relations*, Oxford: Clarendon Press, p.8.

<sup>175</sup> Klotz, A. “International Relations and Migration in Southern Africa”, *African Security Review* Vol 6, No 3, 1997

<sup>176</sup> Loc cit.

government remembers the support accorded to them during the struggle years, and has to balance that with South Africa's destabilisation policies in the region.

Finnemore and Sikkink identify a three stage norm life cycle ranging from norm emergence, norm cascade and internalization. They also argue that norm entrepreneurs are critical for norm emergence particularly because they are able to draw attention to an issue or come up with new issues through framing.

The object of this research is not to go into detail on norm development/emergence but to illustrate the role played by norms in South Africa's choice of a refugee policy. Their discussion will be limited to a brief discussion on the three stages as mentioned above, on the actors involved, their motives and the mechanisms used for norms to be successful. The table below provides a good summary of the three stages of norms:

Table 1. *Stages of norms*<sup>177</sup>

	<i>Stage 1: Norm Emergence</i>	<i>Stage 2: Norm cascade</i>	<i>Stage 3: Internalization</i>
<i>Actors</i>	Norm entrepreneurs with organisational platforms	States, international organisations, networks	Law, professions, bureaucracy
<i>Motives</i>	Altruism, empathy, ideational, commitment	Legitimacy, reputation, esteem	Conformity
<i>Dominant mechanisms</i>	Persuasion	Socialization, institutionalization, demonstration	Habit, institutionalization

To put the subject of international norms into the context of this study, one has to recognise that "the issue of (both legal and illegal) migration intersects various international 'regime' [which are] clusters of international norms and institutions that regulate state policies in

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<sup>177</sup> Ibid. p 898.

particular issue areas.”<sup>178</sup> In this regard, refugees though also considered immigrants by some countries have a special qualification under international norms as a specific group.

There are international human rights norms that are particularly applicable to immigrants. Gurowitz notes three types of norms related to immigrants.<sup>179</sup> These are: general human rights and anti-discrimination norms and they are called that because “they tend to apply to persons, not only citizens and these are therefore also relevant for immigrants.”<sup>180</sup> The second identified norms are those that are aimed specifically at minorities and thirdly, are the norms that are aimed specifically at migrant workers.<sup>181</sup> It is important to note that norms aimed at minorities are not necessarily geared towards migrants but are more focused on national minority rights. However, since these rights are usually addressing broader issues in society, they are applicable to immigrants in their host countries. For instance, Article 27 of ICCPR states that,

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group to enjoy their own culture, to profess and practise their own religion, or to use their own religion, or to use their own language.

In the South African context sections in the South African Constitution conform to the ICCPR provisions with respect to linguistic, cultural and minority rights.<sup>182</sup> In this case, international norms have been subsumed into the domestic sphere.

Gurowitz argues that norms can also be used to give legitimacy both to the causes being championed by NGOs and the NGOs as actors as well.<sup>183</sup> However, she further notes that

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<sup>178</sup> Klotz, A. “International Relations and Migration in Southern Africa”, *African Security Review*, 6:3, p63

<sup>179</sup> Gurowitz, A. “Mobilizing International Norms: Domestic Actors, Immigrants, and the Japanese State” in *World Politics*, Vol.51, No. 3, April 1999,

<sup>180</sup> Ibid.

<sup>181</sup> Ibid.

<sup>182</sup> See South African Constitution 1996, Section 6 on Languages (Founding Provisions), Section 30 and 31 (Bill of Rights)

<sup>183</sup> Gurowitz, A. Op cit. p418

‘while international norms are often a critical source of ideas for change in state policy, there is a great deal of variation in their impact and that there is a need to understand why there is variation in the impact. And in order to understand this variation on the impact, there is a need to ‘do process tracing examining the domestic mechanisms by which norms have effects.’<sup>184</sup> In the case of South Africa, NGOs have played a major role in ensuring that South Africa conforms to international norms both in theory and practice with regards to the protection of the rights of foreign nationals in the country and particularly refugees.

### **5.3 International Humanitarian Law and International Human Rights Law:**

In order to address the protection needs of those who have been affected by wars and/or conflicts, the international community developed International Humanitarian Law which is a body of rules of public international law whether embodied in treaties or based on custom, which aims to contain the ravages of war by limiting the means and methods of warfare on the one hand, and protecting war victims on the other hand.<sup>185</sup> International Humanitarian Law therefore applies to refugees and those who are internally displaced as well.

It is worth noting that “international human rights norms also play an important role in the politics of migration.”<sup>186</sup> This is the case because governments are expected to provide protection to foreign nationals within their territory for the mere fact that they are human beings and have rights derived from this status. The various international conventions and treaties highlight rights that are to be accorded to everyone and not only citizens of a country.

Despite the many challenges states are faced with in addressing immigration, they are still bound by commitments in human rights conventions that they ratify and by customary

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<sup>184</sup> Ibid.

<sup>185</sup> Bugnion, Francis, “Humanitarian Law and the Protection of Refugees” in *Refugee Survey Quarterly*, Vol 24, No 4, 2005, p37

<sup>186</sup> Klotz, A. 1997. Op cit. p38

international law norms.<sup>187</sup> Aleinikoff goes further to argue that ‘most human rights are guaranteed irrespective of an individual’s immigration status [because]; they are a function of a person’s status as a human being [and] not because somebody is a citizen of a particular country’.<sup>188</sup> On the other hand, Polzer when discussing local integration of refugees argues that, ‘in the ideal international system of refugee protection, the main resource of refugees in relation to host states and refugee rights organisations is their moral capital as refugees, which is sufficient to access resources and protection.’<sup>189</sup> However, in both these cases, the rights of non-nationals whether they be refugees or immigrants are sometimes not respected by a host of actors including host governments, international organisations, host populations and other service providers.

Chetail argues that “control over migration remains one of the last bastions of the truly sovereign state” adding that “the rapid changes associated with globalisation have exacerbated this growing discrepancy between the social reality of migration and its legal regulation.”<sup>190</sup> He goes on to argue that ‘the challenges posed by migratory movements to the international community call for a comprehensive understanding of the normative framework and the legal content of the freedom of movement.’<sup>191</sup> The right to freedom of movement was discussed in detail under the literature review and is mentioned briefly below.

It is important to further note that, while at the domestic level, there is some way of sanctioning unwelcome behaviour, for instance through courts of law, “at the international level,...authoritative structures are absent [,] there is no international executive, no

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<sup>187</sup> Aleinikoff, A. “International Legal Norms and Migration: A Report” in Aleinikoff, A. and Chetail, V. (eds) Migration and International Legal Norms, 2003, TMC Asser Press: The Hague, Netherlands, p8

<sup>188</sup> Ibid

<sup>189</sup> Polzer, T. 2008, Op cit. p11

<sup>190</sup> Chetail, V. “Freedom of Movement and Transnational migrations: A human rights perspective” in Aleinikoff, T.A. 2003. Migration and International Legal Norms, TMC Asser Press: The Hague, The Netherlands, p47

<sup>191</sup> Ibid.

international legislature and no judiciary with compulsory jurisdiction”.<sup>192</sup> In this regard, Finnemore and Sikkink note that the fact that in the domestic sphere the making and implementation of law and policy necessitates an understanding of the influence of social norms of behaviour means that IR scholars can learn from this, particularly because the international system is characterized by law and norms operating without direct punitive capacity.<sup>193</sup>

Noting the above, one would therefore argue that the role of the various United Nations agencies is critical in bringing about some order and holding governments and states accountable for their actions to a certain degree.

Klotz argue that “international human rights norms also play a critical role in the politics of migration.”<sup>194</sup> In this regard, various scholars have noted that since the advent of democracy, there has been a new culture of constitutionalism which has created an increase in demands for legal protections in different spheres. Refugees and migrants are increasingly claiming these legal rights also.

#### **5.4 The role of UNHCR in promoting international legal norms and standards:**

It has been noted that South Africa’s foreign policy and practice under apartheid was characterised by the defiance of international norms and rules through promoting apartheid whilst the post-1994 period is focused on promoting human rights and democratic norms.<sup>195</sup> South Africa’s defiance of international norms and its promotion of apartheid policy led to its

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<sup>192</sup> Ndung’u, I. 2007. (MA Thesis). “International law on the protection of child refugees and its domestic implementation: A case study of refugee children in South Africa. (1994-2005)”, University of the Witwatersrand: Johannesburg, p.59.

<sup>193</sup> Finnemore, M. and Sikkink, K. Op cit. p.893.

<sup>194</sup> Klotz, A. Op cit.

<sup>195</sup> Landsberg, C. 2010. The diplomacy of Transformation: South African Foreign Policy and Statecraft. Pan Macmillan: Johannesburg, p

expulsion from the UN in 1974.<sup>196</sup> The country was later re-admitted to the UN in the early 1990s.

It is argued that those who are promoting norms at the international level need to be affiliated to some organisation that will provide them with a platform through which they will be able to promote the proposed norm.<sup>197</sup> In the case of this study, UNHCR is a good platform from which the protection of refugee rights is promoted. Thus Finnemore and Sikkink note that “one prominent feature of modern organisations and an important source of influence for international organizations in particular is their use of expertise and information to change the behaviour of other actors”.<sup>198</sup> The UNHCR enticed the South African government to allow it to operate in South Africa, not only because this was one of the conditions from the African National Congress and foreign donors with regards to the repatriation of former South African exiles and refugees but also because UNHCR had expertise that they could use in the repatriation process and later in the general reception of refugees to support the South African government. This then made it possible for UNHCR to be the first United Nations agency allowed to operate in South Africa.

UNHCR plays a critical role in the protection of the rights of asylum seekers, refugees, internally displaced people (IDPs), the stateless and other people of concern. Having established UNHCR in January 1951, the United Nations signed the UN Convention relating to the Status of Refugees (the Refugee Convention) in July of the same year. The convention ‘regularised the status of refugees and set out a series of rights and obligations’.<sup>199</sup> What is of critical importance though with regards to the Refugee Convention is that while it ‘establishes the fundamental elements of the refugee regime, it does not grant the right to obtain asylum’.<sup>200</sup>

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<sup>196</sup> ‘Permanent Mission of South Africa to the United Nations.’ <http://www.southafrica-newyork.net/pmun/index.html>

<sup>197</sup> Finnemore, M. and Sikkink, K. *Op cit.* p.899.

<sup>198</sup> *Ibid.*

<sup>199</sup> Barnett, L. *Op cit.* p.245.

<sup>200</sup> *Loc cit.*

The right to grant asylum still rests with national governments. Therefore while asylum seekers or would be refugees have a right to seek asylum, there is no guarantee that their applications for asylum will be successful. There is also no guarantee that their applications for asylum would be considered in the first place. The success mostly depends on people meeting the definition of refugee. The principle of non-refoulement guards against governments sending people back to countries where they would face further harm. However, the international refugee regime is constantly changing and since the issue of asylum is politicised, declaring ones intention of applying for asylum is not always received positively by some governments. In some instances though, there have been reports for instance in South Africa where people who should be qualifying for refugee status have been denied same due to lack of knowledge from officials involved in refugee status determination or their inability to explain the asylum process to applicants as noted in the findings of a survey on Refugee Reception offices in South Africa which found that,

Many of those staffing the reception offices do not view their role as one of providing a progressive system of protection for people fleeing persecution...rather, many officers operate as gatekeepers aiming to keep out what is perceived as an influx of migrants seeking to exploit the opportunities in South Africa. It seems that, as a result, many staff members within the asylum-seeker system do not feel an obligation to abide by the legal protections put forward in South Africa's refugee protection system.<sup>201</sup>

UNHCR has been tasked with 'supervising international conventions providing for the protection of refugees.'<sup>202</sup> Therefore, UNHCR's role is to work with state parties to the convention to protect the rights of refugees globally and this is 'carried out through diplomatic means in order to achieve this and other objectives'.<sup>203</sup> UNHCR has set up offices throughout the world to work with governments in assisting refugees.

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<sup>201</sup> Migrants Rights Monitoring Project, "National survey of the refugee reception and status determination in South Africa", Forced Migration Studies Programme: Johannesburg, February 2009, p.52.

<sup>202</sup> United Nations. Convention relating to the Status of Refugees of 28 July 1951, p1

<sup>203</sup> Ibid.



UNHCR is the first UN Agency<sup>204</sup> to set up offices in the country after the signing of the 1991 Memorandum of Understanding. This MoU was signed after “sixteen months of negotiations and confusion”.<sup>205</sup> Efforts to get UNHCR to start operations in South Africa as part of facilitating the repatriation of former South African exiles are said to have been “highly problematic, prone to uncertainty, delay, and costly false starts”.<sup>206</sup> This uncertainty was brought about by the resistance from the South African government at the time to the presence of the UN as there was a belief that the UN will interfere in South Africa’s internal affairs. In order to address this concern, it is argued that the ANC and the government initially entered into bilateral arrangements to undertake the repatriation without UNHCR involvement.<sup>207</sup>

However, the above arrangement soon faced challenges mainly due to their ‘vulnerability to Government manipulation through bureaucratic and legalistic delays and the role of the security forces in harassing and detaining returnees’.<sup>208</sup> The process of repatriation experienced challenges since the agency that had been set up to deal with repatriations lacked funding to be able to operate effectively. Most of the donors were not willing to provide support to the repatriation process without the involvement of UNHCR and were therefore not giving funding to the South African Council of Churches’ National Coordinating Committee for the Repatriation of South African Exiles (NCCR) which was led by Rev. Frank Chikane.<sup>209</sup> This is supported by Memo to Mr C Bezuidenhout from Mr I P De Swart within the Department of Foreign Affairs in response to an enquiry by the Weekly Mail regarding UNHCR. The memo reads;

“During the course of 1990, it became clear that the main donor countries were not willing to donate money to any party for the return of South Africans abroad. A

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<sup>204</sup> Sadako, O. “Refugee Crises in Africa: Challenges and Solutions” Speech to the South African Parliament on 25 March 1997, <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3ae68fbcc?query>

<sup>205</sup> Morrison, J.S. Op cit. p1

<sup>206</sup> Ibid. p2

<sup>207</sup> Ibid.

<sup>208</sup> Ibid.

<sup>209</sup> Ibid.

Working Group consisting of South African officials discussed possible UNHCR cooperation with representative of the UNHCR in Geneva on 22 and 24 October 1990...»<sup>210</sup>

The book by Morrison provides an understanding of the many dynamics that were involved leading up to the signing of this agreement, and also gives a good idea of the decision-making process and some of the dynamics that were involved. As a result this agreement not only laid the foundation for the repatriation of former South African exiles; it also laid the foundation for the reception of other refugees in the country starting with the recognition and fair treatment of Mozambican refugees.

Having provided the background information on how UNHCR came to operate in South Africa, it is important that one also highlights the post 1994 period with regards to refugee policy development in South Africa. Article 36 of the Refugee Convention deals with ‘information on national legislation’ stating that ‘the contracting states shall communicate to the Secretary-General of the United Nations the laws and regulations they may adopt to ensure the application of this Convention’.<sup>211</sup>

It is important to note that South Africa initially did not have the legislative infrastructure or institutional capacity to receive and process asylum applications as mentioned earlier in this report.<sup>212</sup> The Department of Home Affairs had previously issued Passport Control Instruction No. 63 of 1994 which dealt with Procedures for handling Asylum-Seekers and Refugees. Following this, individual applicants started to apply for asylum in South Africa.<sup>213</sup> This and other passport controls formed the basis for refugees to claim asylum. However, this changed after 1994 when South Africa began working on developing refugee legislation.

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<sup>210</sup> De Swardt, I.P. Memo to C. Bezuidenhout. “Further Weekly Mail Enquiry Re UNHCR”, 1991/07/24

<sup>211</sup> Ibid

<sup>212</sup> Van Garderen, J. and Jaichand, V. “Preface: Perspectives on Refugee Protection in South Africa” in Handmaker, J. et al, Perspective on Refugee Protection in South Africa, Lawyers for Human Rights: Pretoria.

<sup>213</sup> Handmaker, J. et al (eds) 2001. Perspectives on Refugee Protection in South Africa, Lawyers for Human Rights: Pretoria, p9

Refugee legislation was promulgated in 1998 and prior to that the Department of Home Affairs issued various Passport Controls to explain how to handle certain refugee issues. For instance, Passport Control Instruction No 20 of 1994 provided Guidelines for Refugee Status Determination of Mozambican Refugees in South Africa. Prior to this, Mozambicans were allowed to self-settle among South Africans although they were ‘never formally granted refugee status during apartheid’<sup>214</sup>. The guidelines were provided as part of the repatriation process of Mozambicans back to Mozambique.

When governments accede to international instruments, they are expected to enact national legislation to give effect to the international commitments. South Africa has ensured that it honours its international responsibility to provide protection to refugees by developing a legislative framework aimed at this group. In order to conform to international legal framework for the protection of refugees, South Africa developed the Refugees Act, No 130 of 1998 which came into operation in 2000. The Act incorporates principles of the international conventions on the protection of refugees. The primary purpose of the Refugees Act is:

To give effect within the Republic of South Africa to the relevant international legal instruments; principles and standards relating to refugees, to provide for the reception into South Africa of asylum seekers; to regulate applications for and recognition of refugee status; to provide for the rights and obligations flowing from such status; and to provide for matters connected therewith.<sup>215</sup>

The Preamble to the Refugees Act quotes the relevant international instruments related to refugees that South Africa has acceded to namely, UN Convention relating to the status of refugees, the 1967 Protocol and the 1969 OAU Convention on Specific Aspects of Refugee Problems in Africa and other human rights instruments. Prior to the Refugees Act, South Africa dealt with issues related to refugees through the much controversial Aliens Control Act and by issuing directives on how to deal with refugees as mentioned above.

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<sup>214</sup> Polzer, T. 2007. *Op cit*

<sup>215</sup> Refugees Act, No 130 of 1998

Chapter 5 of the Refugees Act thus contains both the rights (Sections 27-31) and obligations (Section 34) of refugees in South Africa. It is therefore important to note that, “this interplay of rights and obligations between refugees and states is not only what refugee law is about but also underlines the extreme importance of that law to the system of international protection.”<sup>216</sup>

It is argued that ‘...human rights would seem to offer an important system of protection; however, its extension into the broad field of forced migration is not fully effective...’<sup>217</sup> this is because there are many gaps in the current refugee protection system. For instance, it is argued that with the UNHCR “forced to reconsider its definitions and policies, the emerging [refugee] regime must create an environment where the collective international authority of the UN body has meaningful influence on the autonomous implementation of individual government policy.”<sup>218</sup>

Then in 1997, the Department of Home Affairs published a Green Paper Discussion Document on International Migration. A task team comprising government and civil society representatives was established. The task team worked on the paper on International Migration and made recommendations to the Department of Home Affairs. It has been reported that UNHCR’s formal reasons for participating in this Task Team were more closely aligned to states and was guided by its international mandate.<sup>219</sup>

Studies reveal that the consultation process on immigration in South Africa after 1994 had ‘at various times pitted party against party, department against department, state against civil society, human rights advocates and the courts against the Department of Home Affairs (DHA) and Parliament and Cabinet against the Minister.’<sup>220</sup> The study further noted that this kind of engagement would never have been possible under apartheid. This process was

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<sup>216</sup> ‘Bridging the legal gap’, *Refugees*, No 96, January 1994, p8

<sup>217</sup> Goodwin-Gill, G.S. and Newland, K. “Forced Migration and International Law” in Aleinikoff, T.A. and Chetail, V. 2003. *Migration and International Legal Norms*, TMC Asser: The Hague, p128

<sup>218</sup> Barnet, A. *Op cit.*

<sup>219</sup> Handmaker, J. *Op cit.* p.121.

<sup>220</sup> Crush, J. and McDonald, D. *Op cit.* p1

opened up to civil society.<sup>221</sup> Further literature indicate that in the post-apartheid South Africa, 'the area of refugees saw immediate change taking place particularly because the process of developing refugee legislation took a very short time ('only one year') from the time the Green Paper on International Migration (1997) was published to a law that incorporated 'international convention standards.'<sup>222</sup>

### **5.5 Right to freedom of movement:**

The debate on whether to keep refugees in camps or not inevitably involves the debate on the right to freedom of movement. Fitzpatrick states that 'within a state, lawfully present refugees, asylum seekers and IDPs, have a right to determine their own residence subject to reasonable limitations.'<sup>223</sup> What this means is that these groups of foreigners are allowed to choose their place of residence, however, the reasonable limitation clause then opens up space for governments to restrict movement.

Article 26 of the UN Convention on refugees reads:

Each contracting state shall accord refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.<sup>224</sup>

It is because of Article 26 therefore that UNHCR is expected to encourage governments to adopt a local integration policy. The UNHCR Statute states that UNHCR is supposed to assist states to develop mechanisms to deal with refugees. South Africa did not benefit from this assistance prior to 1991 as it had not opened itself to providing refugee protection. However, since 1991 when it cooperated with UNHCR to facilitate the return of former South African exiles, South Africa was able to benefit from UNHCR assistance. The

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<sup>221</sup> Loc cit.

<sup>222</sup> Wa Kabwe-Segatti, A. Op cit. p.82.

<sup>223</sup> Fitzpatrick J.M. (ed) 2002. Human Rights Protection for Refugees, Asylum-Seekers, and Internally displaced persons: A guide to International Mechanisms and Procedures. Transnational Publishers Inc: New York, p12

<sup>224</sup> UN Convention on the Status of Refugees, 1951

frustration by UNHCR of not being able to assist refugees in South Africa in the early 1990s is noted in a communication by the Africa Bureau where they state that despite the fact that there are over 200,000 Mozambican refugees in South Africa UNHCR had not been able to assist them.<sup>225</sup>

The outline of the 1993 Constitution also proposed section 27 (1) which read “every person shall have the right to engage in economic activity and to pursue a livelihood anywhere in South Africa.” Since this right also applied to every person, it means that refugees were entitled to it. However, in the early 1990s, and later when the Refugees Act was promulgated in 1998 and came into effect in 2000, there was a limitation on the right to work and study for asylum seekers, but refugees were allowed to work. For instance Section 27 of the Refugees Act stipulates the rights that refugees are entitled to in the country. These are highlighted in the Bill of Rights in Chapter 2 of the 1996 South African Constitution.

It has been noted that in South Africa,

“The situation of immigration was radically different from that of asylum. The wider protection of asylum seekers and refugees was obtained essentially thanks to a transformed policy framework characterised by international conventions, to a strong NGO involvement in the policy-making process, to the fact that government because it was lacking international human rights expertise had no option but to work closely with NGO experts and to the relatively simple administration of asylum cases compared to the immense variety of migration situations and their volumes.”<sup>226</sup>

It should be noted that while ‘refugee protection norms and practices constitute the most well-established and widely adopted international regime pertaining to migration; there are nonetheless numerous gaps in the system.’<sup>227</sup> Some of these gaps relate to denial of entry, faulty administrative processes that do not afford asylum seekers fair administrative justice, expulsion, denial of rights by state officials.

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<sup>225</sup> UNHCR, “Briefing of the High Commissioner by the Regional Bureau for Africa”, 06 March 1991, p.6.

<sup>226</sup> Wa Kabwe-Segatti, A. *Op cit*, p85

<sup>227</sup> Aleinikoff, A. *Op cit*. p11

By virtue of incorporating the OAU Refugee Convention, UN Refugee Convention and Constitutional provisions in the Refugees Act 130 of 1998, South African refugee policy can thus be said to be conforming to international norms.<sup>228</sup> In this regard, the role of international norms and standards can be said to have been an important factor to South Africa continuing beyond 1994 to choose a local integration option and not encampment.

Whilst acknowledging the role played by international legal norms in South Africa's choice of a refugee policy, it is important to note the point raised by Klotz stating that 'global principles provide pressures which can influence domestic policy choices [,] but these external resources and pressures need to be mobilised by [other] actors other than the state.'<sup>229</sup> This then leads one to a discussion on the role of domestic politics and actors in influencing South Africa's decision.

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<sup>228</sup> Ibid.

<sup>229</sup><sup>229</sup> Klotz, A. 2000, Op.cit. p843

## ***Chapter 6: Domestic politics, domestic actors and Foreign Policy Practice***

### **6.1 Introduction:**

The early 1990s were characterised by a lot of political changes in South Africa. This period brought about an end to apartheid. The Codesa negotiations took place, broke down and were replaced by multiparty negotiations, the ANC was a government in waiting and the country was plagued with political violence in townships particularly in KwaZulu/Natal and Gauteng. Nelson Mandela and other political prisoners were released from prison.

Immigration into South Africa was still mainly limited to whites and blacks from other African countries were mainly part of the migrant labour system. Foreign policy was at a cross-roads looking both at changing its isolationist focus and coaxing the support of the international community. This chapter discusses the internal politics in South Africa in the early 1990s and beyond, particularly the role played by domestic politics and actors in the practice of foreign policy. However, while mention will be made to broader domestic politics, the focus of this chapter is in relation to immigration, asylum and the treatment of non-nationals in general.

### **6.2 Mobilising for non-nationals rights:**

In the early 1990s, South Africa was at a crossroads, that is, the country was in the process of dismantling apartheid and creating a new democratic dispensation. The period was characterised by a lot of uncertainty and fear from some quarters. This was evidenced by threats made by the Afrikaners, the Inkatha Freedom Party's (IFP) initial refusal to be part of the negotiation processes and threatening not to participate in the 1994 elections to some of the homelands wanting to remain autonomous and not be incorporated into a new South Africa. There was also a lot of political violence particularly in townships and other areas.



During the height of the political violence particularly in Natal, a peace conference was facilitated by religious and business leaders on 14 September 1991.<sup>230</sup> This conference resulted in the signing of the National Peace Accord by various political parties.

Landsberg argues that ‘domestic push and pull factors were not alone in compelling the de Klerk government to reconsider its apartheid policies and the NPs repressive and oppressive tactics, and to move towards a negotiated solution to the apartheid problem.’<sup>231</sup> Regional and international pressures also played key roles in helping nudge and at times force the white minority government to consider a more conciliatory path.’<sup>232</sup>

The early 1990s were also characterised by the unbanning of many political parties and the formation of new ones. For instance, the Freedom Front was only established in 1994.<sup>233</sup> It is important to note that foreign policy can also be influenced by other domestic factors as much as it can influence these factors also. These factors are the “economic and political situation, national attributes, government structures and philosophy, public opinion, interest groups and political parties, natural resources”<sup>234</sup> to name but a few. In terms of South Africa, the economic and political aspirations played a role in shaping South Africa’s foreign policy practice during the period being studied. Because of the pressure South Africa faced economically, socially and politically from the international community, she was forced to reconsider her position with regards to the apartheid system. The sanctions and boycott of South Africa were having a negative impact on the country.<sup>235</sup>

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<sup>230</sup> United Nations, The United Nations and Apartheid 1948-1994, The United Nations Blue Books Series, Volume 1, Department of Public Information, United Nations: New York, p97

<sup>231</sup> Landsberg, C. 2010. Op cit. p61

<sup>232</sup> Ibid.

<sup>233</sup> “Political history – a chronology of events 1990 – 1999”, [www.sahistory.co.za](http://www.sahistory.co.za)

<sup>234</sup> Vale, P. and Mphaisha, C.J.J. “Analysing and evaluating foreign policy” in Nel, P. and McGowan, P.J. 1999. Power, Wealth and Global Order: An International Relations Textbook for Africa, University of Cape Town Press: Rondebosch, p.90

<sup>235</sup> United Nations, Op cit. p87.

It is argued that after 1994, South Africa's domestic policies were in the main focused on the political and economic aspirations of the country whose aim was to solidify and project a developmental, democratic and progressive state.<sup>236</sup> For instance, Mandela indicated that "human rights will be the light that guides [South Africa's] foreign policy"<sup>237</sup> and that this would be achieved through promoting democratic institutions. He further stated that "respect for diversity has been central to the ANC's political credo" and that this would be promoted domestically while in the international arena, South Africa aimed to promote institutions and forces that would make the world safe for diversity.<sup>238</sup>

South Africa's reincorporation in the international system contributes to new pressures on policy makers, not least in the area of migration and that these shifts have not really resulted in any substantial shifts in immigration policy.<sup>239</sup> The challenges that still remain with South Africa's immigration policy are said to originate from identity politics.<sup>240</sup> Klotz further argues that in South Africa, "the politics of identity are particularly salient in two legislative areas, namely, principles of citizenship and distinctions between immigrants and refugees."<sup>241</sup>

During the period under review, South Africa has gone through major changes domestically in many respects and particularly around policy and legislative developments. A significant number of legislation has been developed and amended post 1994 with the aim of aligning them with the Constitutional provisions. These developments also affected the refugee/migration sector as new legislation was developed to address these issues, notably, the 1998 Refugees Act and the Immigration Act of 2002.

In order to further understand why South Africa's choice of a refugee policy is important, it is critical to note the context within which South Africa's immigration pre-1994 was handled.

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<sup>236</sup> Landsberg, C. 2010. Op cit, p9.

<sup>237</sup> Mandela, N. 1993. South Africa's Foreign Policy, p88

<sup>238</sup> Mandela, N. 1993. Op.cit, p89.

<sup>239</sup> Klotz, A. "Migration after apartheid: deracialising South African foreign policy", *Third World Quarterly*, Vol 21, No. 5, 2000, p. 831.

<sup>240</sup> Klotz, A. Op cit, p832

<sup>241</sup> *Ibid*.

It has been noted that South Africa's post-apartheid migration policy was started in earnest from December 1994. South Africa's immigration policy at the time is said to have rested on four pillars. These are: racist policy and legislation; the exploitation of migrant labour from neighbouring countries; tough enforcement legislation; and the repudiation of international refugee conventions.<sup>242</sup> Under apartheid, South Africa's immigration policy was determined by racial and religious criteria and this highlighted who was allowed to enter the country and the conditions thereof.<sup>243</sup> At the time, there were periods where all immigrants were viewed as a threat to the security and interests of the country and thus resulted in isolationist policies and times when some categories of immigrants were allowed to enter the country, notably white Europeans.<sup>244</sup> This exclusionist and racial policy meant that blacks from the continent were not welcome in South Africa.

The other pillar upon which South Africa's apartheid immigration policy rested 'was the immigrant labor system' mainly to the mining and commercial farming sector of South Africa and many of these immigrants came from neighbouring countries.<sup>245</sup> This system of labour migration was 'underwritten by bilateral treaties which [mainly] benefited employers and the respective governments at the expense of migrants' interests.'<sup>246</sup>

The third pillar as highlighted by Crush and MacDonald was apartheid's enforcement apparatus which was fashioned on the notorious pass laws and influx controls.<sup>247</sup> South Africa achieved this through using the Aliens Control Act and there was much investment in 'policing immigration and refugee influx.'<sup>248</sup> South Africa is said to have increased its

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<sup>242</sup> Crush, J. and McDonald, D.A. 'Introduction to Special Issue: Evaluating South African Immigration Policy after Apartheid', *Africa Today*, Vol 48. No.3, Evaluating South African Immigration Policy after apartheid, Autumn 2001, p 2

<sup>243</sup> Ibid.

<sup>244</sup> Ibid.

<sup>245</sup> Ibid.

<sup>246</sup> Ibid

<sup>247</sup> Crush, J. and McDonald, D.A.

<sup>248</sup> Ibid.

immigration enforcement initiatives enhancing the capacity of the South African Police to curb irregular migration.

The fourth pillar of South Africa's apartheid migration regime is said to have been its 'refusal to develop a refugee policy'.<sup>249</sup> It is further argued that 'the National Party government rejected both the United Nations and the Organisation of African Unity refugee conventions'.<sup>250</sup> In this regard, South Africa is said to have consistently treated asylum seekers as "illegal aliens under the Aliens Control Act".

Despite the above pillars of the apartheid government and all the means put in place to discourage migration into South Africa, the South African government still chose to adopt an integration policy for refugees when it eventually decided to enter into agreement with UNHCR. In the case of Mozambican refugees, the South African government did not officially welcome them as refugees but allowed them to stay in the border areas on condition that they did not leave those areas to travel to cities.<sup>251</sup>

Notwithstanding the four pillars mentioned above, it is important to note that South Africa did try to abandon these when it entered into the democratic dispensation. Three instances are noted where South Africa actually tried to 'break with the past'.<sup>252</sup> The first break relates to the selection of immigrants coming into South Africa whereupon it is argued that the South African democratic state has abandoned the practice of choosing immigrant by using race as a category.<sup>253</sup> Despite this attempt, South Africa was still viewed as being opposed to immigration at all. For instance, it has been stated that both decision makers and grassroots communities showed minimal support for immigration.<sup>254</sup>

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<sup>249</sup> Ibid. p 4.

<sup>250</sup> Ibid.

<sup>251</sup> Ibid.

<sup>252</sup> Ibid.

<sup>253</sup> Ibid.

<sup>254</sup> McDonald, D.A. 2000 (quoted in Crush and McDonald, 2001) p.4

South Africa's exclusionary immigration policies can be characterised as 'external influx control.'<sup>255</sup> Just as South Africa's 'internal policy of influx control, the country's immigration and border policies were influenced by notions of white supremacy, and denied opportunities to non-white migrants and immigrants.'<sup>256</sup> This played a role in prompting organisations to mobilise and organise around non-nationals rights.

While states remain the most dominant actors in international politics, the role of non-state actors is increasingly being recognised. These non-state actors include, business, transnational interest groups, NGOs<sup>257</sup>, labour and broader civil society. As mentioned in Chapter 4, the domestic environment plays a crucial role in influencing foreign policy decisions. In the case of South Africa, various actors have had a profound influence on the country's foreign policy decisions in general and within the context of this research with regards to the rights of foreign nationals.

The IFP leader, Nkosi Mangosuthu is said to have "consistently advocated strict measures [in refugee and immigration policies]."<sup>258</sup> Klotz notes that to him it was a surprise that even some from the ANC supported this move.

Civil society organisations have played an important and critical role in the realisation of human rights in South Africa. Human rights activism in South Africa has a long history. For instance, it is argued that,

Compared with other African countries, South Africa presents the specificity of both a vibrant human rights and NGO community in general with a century long experience fighting discrimination and arbitrariness and a robust legal and constitutional

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<sup>255</sup> Handmaker, J. 2009. Op cit. p64

<sup>256</sup> Crush, J. and McDonald, op cit

<sup>257</sup> Le Pere, G. and van Nieuwkerk, A. "Making foreign policy in South Africa", in Nel, P. and McGowan, P.J. 1999. Power, Wealth and Global Order: An international relations textbook for Africa, University of Cape Town: The Foundation for Global Dialogue, p. 202

<sup>258</sup> Audie, K. 2000. p841.

apparatus, certainly one of the most advanced worldwide in terms of anti-discrimination and basic rights protection.<sup>259</sup>

NGOs have been involved in the policy making process and monitoring of implementation. However, prior to 1994, there were not a lot of immigrant/refugee rights organisations. With the advent of democracy, many organisations started taking on this work and holding government accountable. Before 1994, support and assistance to refugees was mainly provided church groups through the South African Council of Churches, Lawyers for Human Rights and the Red Cross. On a political level, the ANC is seen as initially not having had an intention to change the principles of the apartheid era immigration policy.<sup>260</sup>

The role played by pressure groups is important when one looks at this study. During the period under review, rights groups and their legal action are said to have succeeded in opening the door for policy and procedural reforms by framing their claims in legal rather than foreign policy terms.<sup>261</sup> On the other hand, civic organisations and UNHCR participated in the Green Paper Task Team to ensure that South Africa adopted policy that “reflected South Africa’s obligations under international refugee conventions”.<sup>262</sup>

During the early 1990s, prominent domestic actors that represented the interests of refugees and South Africa’s former exiles included the Organisation for African Refugees whose main objective was ‘the resettlement of African refugees in industrialised countries [with] Europe particularly targeted’.<sup>263</sup> Other actors included the African National Congress and Pan-African Congress which represented mostly those South Africans who had been in exile and were now being repatriated back to South Africa. The National Coordinating Committee on

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<sup>259</sup> Wa Kabwe-Segatti, A. “Reforming South African immigration policy in the post-apartheid period (1990-2006): What it means and what it takes” in Wa Kabwe-Segatti, A. and Landau, L. 2008. Migration in Post-apartheid South Africa: Challenges and questions to policy-makers,

<sup>260</sup> Wa Kabwe-Segatti, A. Op.cit.

<sup>261</sup> Klotz, A. ‘Migration after apartheid: Deracialising South African Foreign policy’, *Third World Quarterly* , 21:5, p841

<sup>262</sup> Handmaker, J. Op cit. p.121.

<sup>263</sup> Department of Foreign Affairs, Communication Reference 136/16/2

Repatriation (NCCR) represented the former refugees and exiles and was an implementing partner for UNHCR when the repatriation process began in South Africa.

Another important domestic actor was Lawyers for Human Rights which as early as June 1991 wrote to the Department of Foreign Affairs (Leon Wessels) expressing its and other civil society organisations' concern about the treatment of refugees in South Africa particularly those who were in irregular situations and were being summarily deported by South African authorities upon capture.

In the period post 1994, a group of organisations working for the protection of the rights of refugees came together and formed the National Consortium on Refugee Affairs (NCRA). NCRA was established in 1996 and formalised in 2001. The organisation was a national network of organisations working with refugees. NCRA was largely opposed to government plans to create Reception Centres for asylum seekers. This resulted in them commissioning research on the Perspectives on the detention of asylum seekers in South Africa. Organisations that were part of NCRA included the Cape Town, Durban and Gauteng Refugee Forums, Lawyers for Human Rights, the South African Human Rights Commission.

The NCRA and other civil society organisations used various strategies to lobby the government to provide better protection for asylum seekers and refugees in the country. As such, when it comes to the realisation and respect of the rights of foreign nationals in the country, it has been argued that much that has been achieved in the area of immigrant and refugee protection has been achieved through a combination of legal and non-legal means by those representing the rights of refugees and migrants<sup>264</sup>. This has resulted in a number of social movements being formed covering various issues.

It has been argued that while domestic actors may not be in a position to make foreign policy as they see fit, "they are adept at adapting to international constraints to the exigencies of local power and wealth".<sup>265</sup> This created much ground for civic actors to play an important

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<sup>264</sup> Handmaker, J. Advocating Accountability: Civic-State Interactions to protect refugees in South Africa, 2010, Intersentia: Antwerp

<sup>265</sup> Jacobsen, J.K. "Review: Are All Politics Domestic? Perspectives on the integration of comparative politics and International Relations Theories" in *Comparative Politics*, Vol 29, No. 1, October 1996, p.95.

role in then holding South Africa accountable to its international obligations. In this regard, civil society played an important role by invoking the rights of foreign nationals and particularly those of refugees in international law which was implicit in the government's ratification of the international conventions.<sup>266</sup> In this way, pressure from domestic civil society can be said to have played a key role in South Africa's foreign policy and in turn on the foreign policy practice which was geared towards ratification of international instruments but also upholding international norms and human rights.

In developing a refugee policy and legislative framework, South Africa was in effect conducting a foreign policy decision because the area of refugees mainly has implications for citizens of other countries. During the period under study, developments in the domestic sphere also affected the foreign policy positions. For instance, it is noted that one of the challenges that faced (and continues to face) South Africa in the early 1990s was poverty and economic inequality. These domestic issues have played a major role in South Africa choosing a "neo-liberal economic strategy" and thus "throwing its borders open in many areas of trade,"<sup>267</sup> in order to get business into South Africa while trying to alleviate poverty and promote economic activities.

Domestic pressure groups can exert pressure on foreign policy. There are also other forms of domestic pressure on foreign policy and this includes the role of Portfolio Committees. For instance, in South Africa we have the Portfolio Committee on Foreign Affairs which according to the Department of International Relations and Cooperation 2010 – 2013 Strategic Planning document "is an important mechanism to ensure oversight and accountability in the formulation and conduct of South Africa's Foreign Policy, international relations and cooperation."<sup>268</sup>

Portfolio Committees have played an important role in shaping South Africa's foreign policy by holding government accountable to the domestic arena while making sure that what

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<sup>266</sup> Handmaker, J. 2008. Advocating for accountability: civic-state intersections to protect refugees in South Africa, Intersentia: Antwerp, p102.

<sup>267</sup> Wa Kabwe-Segatti, 2008, p50

<sup>268</sup> Department of International Relations and Cooperation. Strategic Plan 2010-2013



government presents to the outside world is in line with the countries goals. However, with regards to immigration in general and refugee rights in particular, the Portfolio Committee on Home Affairs for instance is quoted as having been instrumental in the development of immigration policy and opening up consultative processes to other actors like civil society organisation.

When looking at whether domestic or international factors have an impact on a government choosing a particular policy, the challenge is really “to identify the conditions under which factors in one political level are more or less influential than factors in the other level, and to explain how this relative balance changes”.<sup>269</sup> This project has addressed this issue.

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<sup>269</sup> Chorev, N. “A fluid divide: Domestic and International Factors in US Trade Policy Formation”, *Review of International Political Economy*, Vol. 14, No. 4, October 2007, p656

## ***Chapter 7: Analysis of study findings and conclusions***

### **7.1 Introduction:**

It is reported that “recent social science work has emphasized analysis of actual governmental decisions in an effort to improve understanding of the process by which decisions are made within large and complex organisations...”<sup>270</sup> This study has analysed the decision-making process that South Africa engaged in between 1991 – 1998 in relation to deciding on a settlement policy for refugees. Paramount in the study was to determine the influence that foreign policy had on the decision taken. The study also briefly looked at the developments within the refugee policy field in the period beyond 1998 to current debates on the protection of refugees and the implications thereof. This chapter presents an analysis of the study findings and draws conclusions on the presented data.

In order to be able to interpret the data correctly, I had to go over the primary documents and notes of the interviews a couple of times to ensure that I really capture the meanings embedded in the documents and the voices of the interviewees. As mentioned earlier, this research is situated within the Constructivist approach which requires a reflection in order to make sense of meaning. Ponterotto has argued that “this reflection can be stimulated by the interactive researcher-participant dialogue”.<sup>271</sup> During the interviewing process, I found myself having to probe to find meaning to what some of the interviewees were saying. This was particularly the case when participants were specifically asked about the role of foreign policy in determining the decision to have a local integration policy. Whilst all interviewees were responding naturally when asked the other questions, I found that there needed to be some bit of reflection before they could respond to the question of whether the choice of

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<sup>270</sup> Weil, H. *Op cit.*

<sup>271</sup> Ponterotto, J.G. *Op cit.* p.129

refugee policy was as a result of foreign policy or whether foreign policy had any influence on the decision.

It is thus important to note that,

“decision-making in foreign policy involves the analysis and assessment of past and current data, in the light of [...] past experience and that of others, who had dealt with similar situations, in order to identify the need and available options for action in the future and the likely implications of each of those options for the protection and promotion of [...] national interests.”<sup>272</sup>

The research design was informed by the choice of theoretical framework which relies heavily on historical events and the inter-subjective meanings people attribute to things depending on their context. As a result, I chose to do a historical study analysing the decision-making process that led to the adoption of a local integration policy for refugee settlement in South Africa. I started off wanting to determine how South African foreign policy might have influenced decision-makers to adopt a local integration policy. In order to test this, I also explored two other explanatory factors, namely, the role of international norms and the role of domestic actors in influencing foreign policy practice.

I then employed the method of process-tracing to highlight the causal chain between the dependent and independent variables. Advantages for using process tracing is that, it can be used together with other methods within the empiricist/positivist tradition, including statistical techniques, analytic narratives, formal modelling or content analysis.<sup>273</sup> Process tracing adds value to methodology, theory and meta-theory.<sup>274</sup>

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<sup>272</sup> South Asia Analysis Group. “Decision-making in foreign policy”, <http://www.southasiaanalysis.org/%5Cnotes86.html>

<sup>273</sup> Checkel, J.T. “Process Tracing” in Klotz, A. and Prakash, D. (eds): Qualitative Methods in International Relations: A Pluralist Guide, Palgrave Macmillan, New York, 2008, pp. 114-115.

<sup>274</sup> Ibid. p. 120.

The findings presented here are from data collected through studying archived material related to the 1991 MoU between South Africa and UNHCR; the 1993 Basic Agreement; minutes and reports of meetings between the government of South Africa and UNHCR, the parliamentary discussions; cabinet memos; the process during the Green and White Papers on International Migration and the development of the Refugees Act. I also analysed statements by the former UN High Commissioner for Refugees, Ms Sadako Agata due to the fact that she was the serving Commissioner when negotiations were conducted between South Africa and UNHCR in the early 1990s and held the position throughout the period covered by this research

Secondary information was collected through semi-structured interviews with some of the people who were involved in the various and critical stages of decision-making with regards to refugee policy in South Africa in the period being studied. Semi-structured interviews allowed me the opportunity to probe further to get clarification on some of the questions. The research findings are presented under each of the explanatory variables that I set out to explore.

## **7.2 Presentation of findings:**

The findings reveal that there were three periods during which South Africa opened up a discussion on the camp vs local integration debate. These periods are the early 1990s during the repatriation of South Africa exiles and former refugees when there were proposals to set up Reception Centres for the returnees. These were indeed set up and managed by NCCR with UNHCR assistance. The second time was in the late 1990s when there was a proposal to create reception centres for asylum seekers in Louis Trichardt and Messina. This proposal was part of the proposals presented by DHA during the discussions on the Refugee Bill and was opposed by civil society organisations. The third time is from 2011 when the Department of Home Affairs made proposals to create Reception Centres for asylum seekers considered high risk at borderlines.

### 7.2.1 The role of Foreign policy and foreign policy practice:

This study has looked at two periods of South Africa's foreign policy, namely, pre-1994 and post 1994. As mentioned in various Chapters above, these two periods were quite distinct in nature with one period promoting an isolationist agenda and the other an engagement agenda. The issue of immigration has always been one of the critical issues in the South African political landscape. During the transition period, issues around immigration still formed part of discussions in parliament both as they affected the domestic sphere 'immigrants are taking jobs' and the international sphere 'other countries view us as....' However, the issue of refugees was not one of the priority areas for the apartheid governments.

South Africa was compelled to invite the United Nations High Commissioner for Refugees (UNHCR) in 1991 to assist with the repatriation of former South African refugees and exiles back into the country. The facilitation of the voluntary repatriation and reintegration process was part of the broader political changes that were taking place in the country between 1990 and 1994. Part of the conditions from the ANC and other political parties was that those in exile be allowed back into the country and that they receive amnesty from prosecution for the political crimes that they had committed during the struggle for liberation. Thus part of the preamble of the 1991 Agreement between the government of RSA and UNHCR Governing the Legal Status of UNHCR, states that,

*[...] the Government of the Republic of South Africa (... the Government'') has invited the United Nations High Commissioner for Refugees [...UNHCR] to establish and maintain an office in South Africa in order to assist in facilitating the process of voluntary repatriation and reintegration of South African returnees who elect to return home as civilians.<sup>275</sup>*

South Africa's foreign policy played a role in determining the choice of refugee policy. According to one informant who was closely linked to the processes of deciding on the refugee policy, *"the issue of camps was never decided upon as you would engaged in*

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<sup>275</sup> Agreement between the Government of the Republic of South Africa and the United Nations High Commissioner for Refugees (UNHCR) governing the legal status, privileges and immunities of the UNHCR office and its personnel in South Africa, 01 October 1991, State President's Minute No: 853

*decision-making, but it was part of the Sunset clauses during the negotiations for the transition to democracy”<sup>276</sup>*

### **7.2.2 International norms and standards:**

It is important to note that “the analysis of international regimes offers insights into two types of political processes, that is, policy making and identity formation [with] the former [stressing] the effects of international norms and institutions and institutions on the behaviours of states while the latter explores the social construction of agents”.

Using Constructivism further helps us to understand the context within which the decision-makers were operating at the time and the meanings associated with the prevailing socio-political conditions. For instance, at the time that both the 1991 and 1993 agreements were signed, South Africa was undergoing major political changes. The country was also trying to change its perception by the international community as a pariah state to one willing to be part of the community of nations.

It is argued that “the process of decision-making in foreign policy has become more complex than in the past due to ... [amongst others], the emergence of ethical issues such as human rights, democracy, and disarmament as important components of the political aspect of foreign policy”.<sup>277</sup> Therefore for those who have been involved in the decision-making pre-1994, one would argue that it was important for them to be seen to be conforming to these human rights principles. This is reflected in the speech by the then Foreign Affairs Minister during parliamentary discussions in 1993 when he highlighted that,

*“New criteria now govern the relations between countries. Membership or association with one or other ideological club is no longer a decisive factor. Those days are also over. Instead, the focus has shifted to the field of human rights and the extent to which governments*

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<sup>276</sup> Interviewee 3, 07 March 2012, Johannesburg

<sup>277</sup> South Asia Analysis Group. *Op cit*

*provide for the political and economic needs of their people. South Africa has responded to these changes as well.*"<sup>278</sup>

The Minister of Foreign Affairs further stated that "...it is clear that South Africa will have to adopt policy positions on the important world issues that will dominate the international stage in the time ahead."<sup>279</sup>

It is important to note that one of the main contributions of constructivism is the notion that state identity fundamentally shapes state preferences and actions.<sup>280</sup> The two statements noted above confirm this belief as they highlight that in her bid to be seen as conforming to international norms and standards, South Africa wanted to identify herself as a state that respects human rights by adopting policy positions that not only touched on world issues but that were also crafted in the jargon of respect for human rights, a principle which the country had been violating whilst under apartheid.

In the case of South Africa, one can then ask what motivated them to commit to the international legal instruments with regards to the protection of refugees. The answer can be found in the discussions held in parliament regarding South Africa's future and its role in the international system. For instance, during a parliamentary discussion on South Africa's foreign policy one Member of Parliament (MP) stated that,

*As far as South Africa's foreign policy is concerned I must say that until recently this was shaped by a "do your damnest" attitude to the rest of the world. No one can gainsay this. Fortunately for us, under the astute leadership of the hon the State President [FW de Klerk] and possibly as a result of the sanity that has been injected into the Department of Foreign Affairs by many professional who joined it, the department today strives to conform to international standards.*<sup>281</sup>

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<sup>278</sup> Hansard, 29 April 1993, col.6359.

<sup>279</sup> Hansard, 29 April 1993, col.6361

<sup>280</sup> Finnemore, M. and Sikkink, K. 'Taking stock: The Constructivist Research Program in International Relations and Comparative Politics' in *Annual Review of Political Science*, 2001, 4, p

<sup>281</sup> Naidoo, P. Parliamentary debate, 12 February 1993, Hansard.

South Africa's commitment to international instruments is also noted in this speech from the then Deputy Minister of Home Affairs, Ms Lindiwe Sisulu during a parliamentary debate on the Refugees Bill in the National Assembly when she stated that,

*The system enshrined in the Bill meets the international standards of refugee determination systems of the industrialised democracies and meets the recommended criteria enunciated by the Executive Committee of the United Nations High Commissioner for Refugees...a refugee once recognised, inter alia, enjoys full legal protection and basic rights and is entitled to seek employment and enjoy social rights in South Africa.*<sup>282</sup>

Parsons has identified different mechanisms that are employed for social constructs to work. These are socialization, persuasion and bricolage.<sup>283</sup> Parsons argues that socialization 'suggests that norms or ideas are spread in a relatively incremental, evolutionary way generated by repeated interaction within groups'.<sup>284</sup>

For instance in the case of South Africa, the former UNHCR Commissioner stated that 'it took us about a year to negotiate this agreement' referring to the 1991 Memorandum of Understanding between South Africa and UNHCR. Since South Africa was at a crossroads at this time, the engagement with UNHCR provided an opportunity for socialisation into the United Nations system in general and the workings of UNHCR in particular. According to records with the Department of Foreign Affairs, it took 509 days to negotiate this agreement.<sup>285</sup>

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<sup>282</sup> Debates of the National Assembly, Hansard, 5 November 1998, p7749.

<sup>283</sup> Parsons, C. 'Constructivism and Interpretive Theory' in Marsh, D. and Stoker, G. (eds). 2010. Theory and Methods in Political Science, Palgrave MacMillan: New York, pp.94-96

<sup>284</sup> Parsons, C. 'Constructivism and Interpretive Theory', p 94

<sup>285</sup> Swardt, N.D.E. "Cooperation Re: Refugees/exiles for your background information please", Memo to Mr K. Kenny within Department of Foreign Affairs, 30/09/1991



After the signing of the 1993 Basic Agreement, the South African government asked UNHCR to carryout “intensive training programmes on the treatment of asylum applications and establishment of determination procedures.”<sup>286</sup> One can argue that this still formed the socialisation process for South Africa.

The Basic Agreement signed in 1993 was based on the 1991 Memorandum of Understanding between UNHCR and the RSA government. The fact that South Africa did not adopt any reservations when acceding to international instruments on refugees was important and has implications for other future attempts to try and create camps. This argument could be used to counter that move.

In the case of post-1994, South African decision-makers continued to take into account human rights principles and their commitment to international instruments. This was noted in the speech by Ms Sisulu in 1998 who was the Deputy Minister of Home Affairs then when presenting the Draft Refugee Bill to parliament she stated that:

*The [refugee] system enshrined in the [Refugee] Bill meets the international standards of refugee determination systems of the industrialised democracies and meets the recommended criteria enunciated by the executive committee of the United Nations High Commissioner for Refugees. Indeed, the South African system surpasses international minimum standards... the Bill is buttressed by international human rights norms and principles which are accepted and applied internationally...*<sup>287</sup>

However, it is important to point out that not all government officials were on the same level of understanding with regards to the commitment to human rights. Whilst some high level decision-makers like the Deputy Minister might have taken these principles into account, not all of them seem to have been in support of a local integration settlement policy. For instance one of the interviewees indicated that

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<sup>286</sup> UN General Assembly, “UNHCR Activities financed by voluntary funds: Report for 1993-1994 and proposed programmes and budget for 1995”, 26 August 1994, p17

<sup>287</sup> Hansard, 5 November 1998, col.7750

*“the issue of camps was really not raised in the early years because how can a country promote democracy but at the same time talk about curtailing certain rights, so the issue of freedom of movement for refugees was implied in the fact that the country was adopting democratic principles and could therefore not promote something that stood against those principles”.*<sup>288</sup>

We can also see the need for South Africa to be seen as doing the right thing when looking at some of the discussions in 1993, which could be applied to the logic of appropriateness as espoused within Constructivism. For instance, in 1993 the Minister of Foreign Affairs while addressing a parliamentary sitting stated that,

*“Just as apartheid was a serious threat to South Africa’s peace and economic growth and led to our world-wide isolation, any other policy which a future government wishes to apply here can also lead to conflict with the international community if that policy is based on unacceptable premises”*<sup>289</sup>

The speech by the then Minister of Foreign Affairs (Pik Botha) highlighted some of the critical issues that South Africa needed to address if it was really to be seen to be changing and adhering to international legal norms. For instance, in his address to parliament on 29 April 1993 he said,

*A new international humanitarian order is coming into being: The implementation of human rights instruments; the rights of the child; ethnicity and cultural differences; minority rights; indigenous peoples; the advancement of women; racism and xenophobia; the illicit production and supply of, and demand for and trafficking in narcotic drugs and psychotropic substances; migration; asylum; refugees and displaced persons; the world social situation; the youth; the aged; disabled persons and the family.*<sup>290</sup>

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<sup>288</sup> Interview, 07 March 2012

<sup>289</sup> Hansard, 29 April 1993, col.6357

<sup>290</sup> Hansard, 29 April 1993, col.6363

The Foreign Affairs Minister went on to state that "...these are matters of profound importance for the welfare of our planet and the human race. As such they are of vital importance to South Africa. As I have indicated they call for the highest standards of non-partisanship in the formulation of our policies in each and every case".<sup>291</sup>

The issue of norms and the role of the UN organisations was raised during the negotiation phase between South Africa and the UN which ultimately resulted in the signing of the 1991 agreement. It is noted that the de Klerk government was initially hostile and sceptical of the UN's role in the repatriation process and initially preferred to keep the negotiations about the return of exiles between the government and the ANC. However, the norm entrepreneurs from the UN are said to have worked with the then South African government "to accept a UN presence inside South Africa which was the first time in thirty years that South Africa had done so."<sup>292</sup> The 1991 MoU is said to have partly come about as a result of the "UN's side consultations with the ANC, the Pan Africanist Congress (PAC), and the Azanian People's Organisation (AZAPO)."<sup>293</sup>

When the ANC realised that the arrangement with the government was not working according to the agreed timelines, they approached the UN in early 1991 "in hopes of creating a revamped, UN-managed approach [to repatriation] whilst at the same time not renouncing the government-ANC indemnity framework."<sup>294</sup> UNHCR is said to have responded positively to the ANC approaching them particularly because it had been confined to the side lines until then as they had not wanted to be caught up in the struggle between the South African government and ANC. UNHCR was further motivated to agree to the ANC's approach to them because the UN General Assembly had issued resolutions in September and December 1990 which authorised the UN to become engaged in the process on a temporary,

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<sup>291</sup> Hansard, 29 April 1993, cols. 6363-6364

<sup>292</sup> Morrison, J. S. 1991. UNHCR Enters South Africa: A constrained mandate. US Committee for Refugees: Washington, p1

<sup>293</sup> Ibid. p1.

<sup>294</sup> Ibid.

humanitarian basis to facilitate the repatriation of the exiles.<sup>295</sup> The humanitarian nature of UNHCR's involvement was emphasised as recalled also by Mr Kalumiya.

The negotiations between UNHCR and the government are said to have dragged on for a while because initially the Cabinet was strongly opposed to any UN institutional presence inside South Africa. This resulted in the agreements that had been worked out by UNHCR, Department of Foreign Affairs and Justice not to be approved. However, after further negotiations, the Cabinet is said to have eventually relented and announced on August 16 1991 that the UN and South Africa had initialled the agreement that was eventually signed on 04 September 1991<sup>296</sup> and is the subject of this study.

The decision-making process leading up to the signing of the agreement is said to have been full of challenges. The government was opposed to the UN presence in the country, the ANC was entering into agreements with the government on repatriation without consultation with the other liberation movements, and the pace of repatriation was very slow. The arrangements between the ANC and government also resulted in the Groote Schuur Minute and the Pretoria Minute aimed at the suspension of armed struggle.<sup>297</sup>

The other issue of concern to the SA government was that if they allowed UNCHR to operate in South Africa then they would be forced to recognise the plight of the Mozambican refugees who were in the country. In order to counter this, the SA government put stringent conditions on the operations of UNHCR by limiting their presence in South Africa only to 1 year and also on condition that they agree on certain principles and modalities of the repatriation program and have minimal staff compliment.<sup>298</sup> One issue that came up was related to the amnesty for the returnees. The ANC and the other liberation movements had wanted total amnesty for acts committed during the armed struggle, but the SA government

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<sup>295</sup> Ibid.

<sup>296</sup> Ibid.

<sup>297</sup> Ibid.

<sup>298</sup> Ibid.

put certain conditions stating that no amnesty would be granted for “those offences involving serious common law crimes”.<sup>299</sup>

In the end UNHCR was allowed to operate in South Africa to facilitate the repatriation process. It is reported that when the SA government granted UNHCR permission to operate in South Africa, the US and Japanese governments donated millions of dollars as a condition that UNHCR continued to operate in SA beyond the repatriation process.<sup>300</sup> This basically meant that UNHCR would then provide protection to Mozambican refugees in South Africa and further facilitate their repatriation process. It is thus possible that the reason for having a clause on “any other supplementary agreements hereto...” was to cater for that condition which had been put forward by the donors. In my interview with Mr Kalumiya he stated that, “The [1991] agreement is written in diplomatic language, but for us who were there we understand what some of the language implied.”

### **7.2.3 The role of domestic politics and actors:**

Foreign policy decision-making pre-1994 period was mainly limited to those in government and international organisations. The role of domestic politics and actors varied depending on who they were and who they represented. Their prior engagement on foreign policy issues determined how these actors participated/contributed to decision-making. The ANC showed its commitment to international norms even before signing any of the international instruments. This happened when it held its policy conference in 1993 and noted the issue of refugees as indicated in their policy discussion document of 1994 that,

*...as good global citizens, we believe that South Africa should be engaged with this problem [of refugees]. We will be strongly supportive of the United Nations High Commissioner for Refugees (UNHCR). We will take our cue on the definition of refugees from the Convention on Refugee Problems in Africa, which was accepted by the OAU in 1969.*<sup>301</sup>

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<sup>299</sup> 1991 South Africa-UNHCR Memorandum of Understanding, p2.

<sup>300</sup> Morrison, J.S. Op cit. p16

<sup>301</sup> African National Congress. “Foreign Policy Perspective in a democratic South Africa”  
<http://www.anc.org.za/show.php?id=230>

Data gathered indicate a marginal involvement of civil society organisations particularly the NCCR, political parties, Lawyers for Human Rights (albeit as an intervening party not necessarily fully involved in the process) during the period 1990-1994. There were also, humanitarian organisations that worked mainly with the Mozambican refugees in KwaNgwane and Gazankulu. However, their role with regards to foreign policy decision-making is not clearly articulated in many of the documents that have been consulted for this study. What is highlighted is mainly their humanitarian role in assisting the refugees. Much of the decision-making at the time (pre-1994) was done at government level including parliament and cabinet.

However, after 1994, there was a diverse group of stakeholders who had an opportunity to contribute towards the development of the refugee policy which is still used today. These included NGOs like Lawyers for Human Rights, the National Consortium of Refugee Affairs<sup>302</sup>, the Gauteng Refugee Forum, Southern African Catholic Bishops Conference, Southern African Migration Project (SAMP), and many others. These organisations were collectively and individually advocating for a rights based refugee policy to be adopted.

### **7.3 Analysing decision-making in foreign policy:**

One of the greatest difficulties in studying foreign policy decision-making is acquiring source information about the behaviour of key actors. Unless the decision-maker is willing to make recollections about sensitive national security decision public, [efforts to study foreign policy decision-making are stymied].<sup>303</sup> In the case of this study, I had a challenge in gaining access to DHA official records and as a result I have had to rely heavily on parliamentary debates in this regard tracing how members of parliament discussed and made resolutions on issues foreign policy and refugee issues. As a result, my analysis of the parliamentary debates focused mainly on the Department of Home Affairs and the Department of Foreign Affairs

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<sup>302</sup> The National Consortium of Refugee Affairs (NCRA) was made up of the following organisations: Lawyers for Human Rights, Wits Law Clinic Refugee Rights Project, Centre for the Study of Violence and Reconciliation, Pastoral Care, Provincial Networks working on refugee issues

<sup>303</sup> Weil, H.M. "Can bureaucracies be rational actors? Foreign-Policy decision-making in North Vietnam", in *International Studies Quarterly*, Vol 19, No 4, December 1974, p435

(now DIRCO). The minutes and official records that I studied reflected the discussions that took place then.

Event data have a significant potential advantage over memoirs and recollections as a source of information regarding the decision-making process. After a decision has been implemented, the decision-maker usually has much more information about the options than he did when the decision was required. It is at least possible, then, that recollections of the decision process is colored by the additional information so that its use as a source data for the analysis will result in an unrealistic portrayal of the problems confronted when the decision was required. Event data, however, are not distorted by the passage of time between the decision-making situation and the analysis, and foreign policy actions, at least in the sense of international events are comparable across societies, within the confines of source coverage problems.<sup>304</sup>

The influence of foreign policy on how South Africa treats refugees and the role of international legal norms was raised by one interviewee when asked whether she thought foreign policy had any role to play when South Africa chose a local integration policy. Her response did not answer the question directly but what she said was quite instructive. She stated that

*“in the case of the voluntary repatriation of Angolan refugees, while UNHCR had evoked the cessation clause internationally for all Angolans to allow them to return home, South Africa chose not to properly follow-through on this by encouraging Angolans to go back home, this was mainly because of South Africa’s historical connections and relations with Angola during the struggle years....so there is your foreign policy at play.”*

It is argued that South Africa wanted to be readmitted to the UN to be part of the international society. However, international society has its origins in the West meaning that it was constructed there.<sup>305</sup> However, having been constructed in the West, international society has

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<sup>304</sup> Weil, H. Op cit. pp435-436

<sup>305</sup> Spence, J. “Vision and Reality”, in Sidiropoulos, E. 2004. South Africa’s Foreign Policy 1994-2004, Apartheid Past, Renaissance Future, 47

over the years gained inter-subjective meaning for states in the world and as such South Africa also related to this term through its work in the protection of non-nationals.

One of the sub-questions that this research sought to address was whether the fact that some South Africans had been in exile and therefore know the hardships of being a refugee had had any influence in the refugee policies that have been adopted by South Africa during the period under review in this research. The answer to this sub-question is captured in the following statement from the then Deputy Minister of Home Affairs in South Africa (1996-2001), Ms. Lindiwe Sisulu found in Majodina (2001):

*“Because of our history and our struggle we have increasingly had to bear the mantle of champions of the oppressed. Furthermore, because of the political and economic stability in our country, and the fact that thousands of us have experienced the pain of destitution and homelessness, South Africa is in a unique position to chart a humane policy as far as refugees are concerned. This has meant that South Africa has had to put into practice the concept of international solidarity and burden sharing, allowing the victims of internal conflicts and human violations to seek safe have within our borders”*<sup>306</sup>

It is clear from this statement that this fact might have been in the minds of some of the officials involved in the policy process despite the fact that it might not have been the driving and deciding issue. However, Ms Sisulu further highlighted the influence of international legal norms on South Africa’s decision to accept refugees during her presentation of the Refugee Bill to the National Assembly in 1993. She stated that,

*When we give asylum to refugees, we do so because of our constitutional and international obligations. We do so as a matter of principle, not as matter of goodwill, and we are not doing anyone a favour*<sup>307</sup>

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<sup>306</sup> Sisulu, L.N. “Meeting the challenges of forced Migration” in Majodina, Z. 2001. The challenge of forced migration in Southern Africa, African Institute of South Africa: Pretoria, p6

<sup>307</sup> L. Sisulu, Hansard, 5 November 1998, p7751



However, despite government's commitment to the principles of democracy and human rights, there were proposals from some government officials to establish reception centres where asylum seekers would be kept pending the finalisation of their applications. According to de La Hunt, "in 1999, the NGO community was taken completely aback by a proposal from the Department of Home Affairs to establish two reception centres where asylum seekers would remain pending adjudication of their claims".<sup>308</sup> The fact that there was a proposal to create camps or reception centres by the Department of Home Affairs is also supported by the interviewees for this research. For instance, both interviewees A and B representing civil society stated that,

*"Two sites had already been identified by the Department of Home Affairs in Louis Trichardt and Messina"<sup>309</sup> and "these had been old Army camps."<sup>310</sup>*

Another interviewee who had been working with the Department of Home Affairs in the early years of the country engaging with refugee issues stated that,

*"On a number of occasions, we did send cabinet memos where we were proposing the establishment of camps, however, this was always turned down at cabinet level, actually cabinet did not even entertain it"<sup>311</sup>*

In response to this proposal and as part of the civil society advocacy effort to oppose the establishment of the camps (Reception centres as they were called), the NCRA and University of Cape Town commissioned a paper titled "Detaining Asylum-Seekers: Perspectives on Reception Centres for Asylum-seekers in South Africa".<sup>312</sup> Some of the issues covered by this document included issues related to the Impact of reception centres on

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<sup>308</sup> de La Hunt, L. 2001. "New Refugee Policies in Africa-South Africa", Refugee Studies Centre: Oxford, p5

<sup>311</sup> Interview 3, 07 March 2012, Johannesburg.

<sup>311</sup> Interview 3, 07 March 2012, Johannesburg.

<sup>312</sup> National Consortium on Refugee Affairs and University of Cape Town Legal Aid Clinic, "Detaining Asylum Seekers: Perspectives on Reception Centres for Asylum-seekers in South Africa", September 2000

the right to freedom and security of the person, Impact of reception centres on the freedom of movement, International and Comparative Perspective, Practical issues on the establishment of camps/reception centres. This document served as the basis for engagement with the government and other stakeholders.

The main argument presented by these civil society organisations was that the establishment of these reception centres was encroaching on the rights of asylum seekers and against international law.

The involvement of Lawyers for Human Rights (LHR) on the protection of the rights of refugees seem to be the longest when compared to the other actors who were part of policy making processes beyond 1991. This is evidenced by a letter that the LHR Director wrote to the Department of Foreign Affairs dated 10 June 1991 requesting for a meeting “concerning refugees”.<sup>313</sup> In this letter LHR was explaining that the office was inundated by refugees from neighbouring countries and as far afield as Uganda. The letter went further to highlight their concern about the way the South African government was handling the matter because according to the reports they received, the government was repatriating all the refugees if found by the authorities. In this regard, LHR sought a meeting with the Department of Foreign Affairs as they had suggestions on how to deal with the refugees. For instance, one of the issues raised in the letter is that LHR was in contact with UNHCR in frontline states who had indicated their willingness to accept the refugees being chased from South Africa.

The LHR letter goes on to indicate that due to the fact that the South African government was at the time involved in building good relationships with other countries in the region, that the Department of Foreign Affairs to whom they had written was in a position to address their concern about the treatment of refugees. I could not find any response from Department of Foreign Affairs to indicate if the meeting was ever held. However, what is of note in the letter is that LHR had shown their willingness to engage with the government and provide advice on refugee related issues despite government policy at the time.

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<sup>313</sup> Murraybrown, J. “Request for meeting concerning refugees” letter to Mr Leon Wessels at the Department of Foreign Affairs, 10 June 1991.

As far as post-1994 is concerned, LHR continued to play an important role in refugee policy and protection issues. They submitted a position paper<sup>314</sup> to the Department of Home Affairs opposing the creation of camps in 1999. LHR also served in the Draft White Paper Task Team which was instrument in the development and decision-making processes related to developing refugee policy in South Africa. .

However, what is surprising about these developments is that they were in complete contrast of what had been proposed on the Draft Refugee White Paper that was sent to cabinet. Section 4.5 of the Draft Refugee White Paper reads “Refugees shall be accorded basic human dignity rights such as protection against discrimination, the right to family unity, freedom of movement and association and freedom of religion.”<sup>315</sup> Section 4.8.2 dealing with local integration read “the government acknowledges that full protection of refugees requires the attainment of a degree of self-sufficiency and local integration within the host community for the duration of their exile...

It is not clear where this proposal ended since; it was briefly part of the discussions and submissions related to both the Green Paper on International Migration and the Draft White Paper. Since, one could not access DHA records in this regard; one can only rely on the information provided by the participants to this study to make inferences. Indications are that there was strong lobbying from civil society against the introduction of camps. Two of the participants indicated that UNHCR seemed to support the proposal for the establishment of camps or at least was seen as having not been verbal enough against the proposal to establish camps, noting that,

*“UNHCR did not come out strongly about whether they supported either camp or non-camp policy. A lot of lobbying was done by civil society to discourage the government from introducing camps. The issue caused some division even within civil society and refugee groups particularly because, some refugees had lived in camps in other countries and knew the services that came with camp life, but there were some real concerns regarding security issues in camps, the fact that some refugee camps*

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<sup>314</sup> Lawyers for Human Rights, “

<sup>315</sup> The White Paper for Refugee Affairs Task Team, “Draft Refugee White Paper”, p

*are usually well resourced when compared with local populations and this could result in increased tensions... “*

UNHCR also developed a Discussion Paper titled ‘Discussion Document on the Proposed Reception Centres for Asylum Seekers in South Africa (1999). The paper served as a basis for discussion between all stakeholders addressing various issues arising from the proposed reception centres for asylum seekers.

In the context of Mozambican refugees, Polzer argues that ‘...UNHCR thus colluded with the violation of the rights to free movement through the continued *de facto* spatial restrictions of the refugees to the rural homeland areas, and the violation of articles 27 and 28 of the 1951 UN Convention which define the right to identity papers or travel documents.’<sup>316</sup>

This research has been positioned within the constructivist school of thought which “espouses a hermeneutical approach, which maintains that meaning is hidden and must be brought to the surface through deep reflection [and that], this reflection can be stimulated by the interactive researcher-participant dialogue.”<sup>317</sup> Because of the above, constructivism is thus different from the other theoretical frameworks because of its emphasis on the ‘centrality of the interaction between the investigator and the object of investigation and the fact that, deeper meaning of events can only be understood through this interaction.’<sup>318</sup> One of the methods I used for this research was semi-structured interviews with people who were involved in the decision-making or processes leading up to the decisions.

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<sup>316</sup> Polzer, T. 2007.Op cit. 31.

<sup>317</sup> Ponterotto, J.G. ‘Qualitative research in counselling psychology: A primer on research paradigms and philosophy of science’, Journal of Counseling Psychology, 2005, Vol.52, No.2, p129.

<sup>318</sup> Ibid p129

#### 7.4 The right to freedom of movement:

In studying the primary documents, one of the key themes I was looking for was a discussion on the right to freedom of movement as I was hoping that this would give me an indication of how the local integration settlement policy came to be adopted. I found mention to this right in the 1991 Memorandum of Understanding which was addressing the freedom of movement of former South African refugees and exiles. For instance, Point 4 (b) states that:

*The parties hereto shall co-operate on the basis of the following principles and provisions:*

*(b) The returnees will enjoy complete freedom of movement in South Africa and, in this context, will have the right to return to the areas where they lived immediately prior to leaving South Africa or to a comparable area of their choice*

However, there is no mention of the right to freedom of movement in the 1993 Basic Agreement. Instead Section 10 (d) stipulates that “the government may locate asylum seekers or refugees to such areas or places agreed to with the UNHCR for that purpose.”<sup>319</sup>

The right to freedom of movement was further raised during the Multi-party negotiations that took place in the early 1990s, particularly when the Interim Constitution was being drafted. In terms of the initial multi-party discussions, the right to freedom of movement was proposed as Section 18.<sup>320</sup> An outline of the 1993 Constitution proposed the right to “freely choose a place of residence anywhere in South Africa for every person”<sup>321</sup>. Because the proposed right was open to ‘every person’, it means that even non-nationals were not to be restricted to specific settlement areas or camps. However, when the 1996 Constitution was adopted, the

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<sup>319</sup> 1993 Basic Agreement, p8

<sup>320</sup> “Constitution of the Republic of South Africa 1993 Draft Outline: 21 July 1993” in South African Multi-party negotiating process: Negotiating Council Technical Committee: Constitutional Issues, Constitution: Draft Outlines, 21 July 6-20 August 1993

<sup>321</sup> “Constitution of the Republic of South Africa 1993 Draft Outline: 21 July 1993” in South African Multi-party negotiating process: Negotiating Council Technical Committee: Constitutional Issues, Constitution: Draft Outlines, 21 July 6-20 August 1993

right to freedom of movement became Section 21 and was expanded to include the right to leave and rights to residence for citizens and the right to a passport.<sup>322</sup>

There were some inconsistencies noted while analysing some primary documents with what has been presented in some literature. For instance, the quoted statistics from UNHCR for 1993, indicate that there were 250 000 refugees in South Africa at the time. In terms of literature this number represented the number of Mozambican refugees<sup>323</sup>; however, according to the recollection by de la Hunt in her address in Oxford dated January 2001, South Africa was already receiving refugees from “Angola, Somalia and what was then Zaire” in 1993.<sup>324</sup> This inconsistency could be attributed to DHA not having a well-established asylum system at the time and therefore not keeping proper records of those who had applied for asylum. Surprisingly though UNHCR had statistics of refugees from other countries in South Africa in 1993 in addition to Mozambican refugees.<sup>325</sup>

With regards to recent developments in the protection of refugees in South Africa, the ANC published a Policy Discussion Document titled “Peace and Stability” in early 2012. The discussion document deals with three issues. These are the Positioning of Home Affairs to be the backbone of security, service delivery and the developmental state; Justice-Transformation of the courts and judiciary and creating a single police service. The section on Home Affairs addresses the issue of asylum seekers and refugees in the country and proposes that,

The current policy of non-encampment should continue as international experience is that permanent camps bring their own risks and challenges. However, instead of the current weak controls, South Africa must implement a risk-based approach. Those asylum seekers who present a high risk must be accommodated in a secure facility,

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<sup>322</sup> Constitution of the Republic of South Africa, 1996, p10

<sup>323</sup> Van Garderen. J. and Jaichand, V. Op cit. p.5 and Polzer, T. Op. Cit

<sup>324</sup> de La Hunt, L. 2001. Op cit. p.2

<sup>325</sup> General Assembly: Executive Committee of the High Commissioner’s Programme , Forty-fifth session, A/AC.96/825/Part I/26, 26 August 1994, p17. See Annexure B for a breakdown of the numbers

until their status has been determined. The low risk asylum seekers will be processed while they are assisted by various organisations.<sup>326</sup>

It is encouraging to note that the proposal is to maintain a non-encampment policy. However, it would be interesting to note how the ANC plans to assess the extent of risk each individual asylum seeker poses to the system. The issue of security in refugee camps as a deterrent from setting up camps was raised by two of the interviewees in my research.

### **7.5 Jacobsen's (1996) Refugee Policy Choices framework:**

In analysing the findings presented above, I am employing Jacobsen's policy sets in addition to constructivism. As mentioned earlier in this report, Jacobsen's framework is aimed at addressing policy options for mass refugee influxes. However, in using it in a non-refugee influx case, I want to suggest that this model can also be applied in decision-making situations where there is no observed influx because The three policy sets are discussed below highlighting how the South African situation fits into this model.

#### **Policy set I: Admission and treatment of refugees**

This policy set concerns the admission and treatment of refugees, starting with the appearance of displaced people at [the] border [of the receiving state].<sup>327</sup> It is noted that, with the appearance of displaced people at its borders, the government must decide whether to respond negatively by denying them entry or positively by admitting them. In the case of South Africa prior to 1994, the mass influx of Mozambican refugees received a neutral response, whereby they were not officially welcomed but were also not actively denied entry into the country.

With regards to refugees in general, the South African government had an open door policy for refugees who were from Europe but a negative response to those mainly from the African continent. However, starting with the signing of the 1991 MoU and the signing of the 1993

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<sup>326</sup> African National Congress. "Peace and Stability", Policy Discussion Document, March 2012, p6

<sup>327</sup> Jacobsen, K. Op cit, p

Basic Agreement, South Africa illustrated a positive decision to allow refugees to seek protection in the country. In the case of the 1991 MoU, South Africa was implementing one of the durable solutions in terms of refugee flows, namely, repatriation of former South African refugees and exiles.

The decision to allow former South African refugees and exiles to repatriation was part of the negotiations that ultimately led to South Africa attaining a multi-party democracy. Local integration is often promoted for those refugees who are not able to return to their countries of origin and is facilitated through allowing refugees to settle within their host communities. A broader definition of local integration was provided earlier in the report under the camp vs. local integration discussion.

When looking further at Policy Set I with regards to South Africa, it is clear that the period post 1994 illustrates further positive developments as South Africa started to issue passport controls detailing how to apply for asylum and also started to work on the legislative and policy frameworks to deal with asylum claims. Policy Set I also involves governments deciding on the rights, restrictions and the degree of protection to be accorded to refugees.<sup>328</sup>

In the case of South Africa the period before 1994 and in terms of the Basic agreement, there was a restriction on the rights that refugees were to be entitled to. For instance, Section 11 (c) and (d) of the 1993 Basic Agreement respectively state that, “presence of a refugee shall thereafter be regularised provided that the continued presence alone of such a person shall not establish any claim to permanent residence or any similar right in South Africa” and “refugees shall enjoy full legal protection but shall not have automatic entitlement to social, economic and welfare rights, provided that they will not be treated any less favourably than aliens generally in the same circumstances.”<sup>329</sup>

However post-1994, the issue of rights and restrictions has been taken into account through the Constitution which provides most rights to “everyone”, by including constitutional

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<sup>328</sup> Jacobsen, K. 1996. Op cit, p658

<sup>329</sup> Basic Agreement between the Government of the Republic of South Africa and the United Nations High Commissioner for Refugees concerning the presence, role, legal status, immunities and privileges of the UNHCR and its personnel in the Republic of South Africa, 1993, p.8.



provisions in the Refugees Act and progressively increasing some of the rights. However, most of the progressive realisation of the rights of refugees has come by mainly through litigation and/or lobbying and advocacy by civil society organisations.

Many governments in making decisions about the settlement policy options of refugees are often informed by the traditional and stereotypical understanding of who refugees are and what needs to be done for them. As one interviewee indicated,

*‘what compounded the situation [in South Africa in the early 1990s] is that the refugees defied the stereotypical definition of them as poor and dependent [because] they were highly educated and had held high positions in their countries and were also urban refugees.’<sup>330</sup>*

## **Policy Set II: Government response to international refugee organisations:**

The second policy set as proposed by Jacobsen (1996) “concerns the government response to international refugee organisations, including UNHCR and governmental organisations (NGOs) concerned with refugees.”<sup>331</sup> Under this policy set, governments are said to often receive applications from international organisations to enter the country to be able to assist refugees.<sup>332</sup> However, in the case of South Africa in the early 1990s, realising that as part of the transformation and political changes that were taking place in the country at the time, there was going to be a need for repatriation of large numbers of former South African refugees and exiles, the South African government invited UNHCR to enter the country and exercise part of its international mandate of protecting refugees and other people of concern. UNHCR was going to meet this mandate through facilitating the repatriation process.

Official records indicate that the Government of South Africa was initially opposed to the presence of the UN and particularly UNHCR in South Africa. The government was compelled to accept the UNHCR when major donors decided they were only going to provide

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<sup>330</sup> Interview, 11 January 2012, Sr Aine

<sup>331</sup> Loc cit.

<sup>332</sup> Ibid

support to South Africa through an international organisation like UNHCR. After many deliberations between the various actors, South Africa eventually allowed UNHCR to operate in South Africa. However, one of the conditions was that “UNHCR would operate more for humanitarian conditions than political”.<sup>333</sup> This statement is supported by a provision in the 1991 MoU which reads, “...that in keeping with its Statute and Mandate UNHCR shall perform its functions in this respect in a strictly humanitarian, neutral and non-partisan manner”.<sup>334</sup>

*“Pretoria was really paranoid towards the UN, but because of the relationship that had been developed while working on the situation of Namibia, we were able to work with the Pretoria regime and the regime had called on the UN to be engaged more on the humanitarian side and not political”*<sup>335</sup>

The paranoia that Mr Kalumiya spoke about was confirmed in one of the articles I read stating that,

UNHCR, the first United Nations body to establish a presence in South Africa for more than 30 years, has endured a fair share of confusion after overcoming outright hostility from several quarters in its operation to bring back refugees and political exiles. Conservatives in South Africa have condemned UNHCR’s presence, describing the U.N. as a “cancer” and a “viper in South Africa’s bosom”. The U.N. has been accused in the right-wing press of “squandering billions of dollars and undermining the taxpayers who supply them.”<sup>336</sup>

It is however, interesting that while the government had already ‘invited’ UNHCR to operate in the country, that it did not immediately extend their mandate to include Mozambican

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<sup>333</sup> Kalumiya, K. telephone interview, 14 March 2012

<sup>334</sup> Memorandum of Understanding between the government of the Republic of South Africa and UNHCR, 1991, p3

<sup>335</sup> Kallu Kalumiya, Telephone interview, 14 March 2012

<sup>336</sup> Keats, M. “South Africa: Facing reality”, in *Refugees*, No 89, May 1992, p34

refugees as some of them had already been in the country for a number of years. In this regard, Mr Kalumiya stated that,

Mr Kalumiya had this to say about the South African government in relation to Mozambican refugees, *“remember that Pretoria was in denial and they did not want to acknowledge that there was a refugee problem in South Africa and that is why they initially did not want to acknowledge Mozambican refugees and the fact that these refugees were mainly in the homelands and not in South Africa proper worked well for the [apartheid] regime.”*<sup>337</sup> *If the regime acknowledged that there were refugees in South Africa, this would have implicated them due to their foreign policy of total onslaught in the region”.*

The above words are echoed in this extract from the UNHCR journal, *Refugees*,

...a United Nations body is in constant contact with South African authorities on assisting returnees, and for UNHCR the operation is especially crucial. There are more than 100,000 refugees from the civil conflict in Mozambique known to be living in camps in South Africa. With the goodwill of the South African Government, the UNHCR mandate will be extended to provide the necessary aid to these refugees.<sup>338</sup>

Indeed the UNHCR mandate was extended on 06 September 1993 with the signing of the Basic Agreement extending their mandate to refugees from other countries in addition to assisting South African returnees. On 15 October 1993, a Tripartite Agreement was signed between the Government of South Africa, the Government of Mozambique and UNHCR for the voluntary repatriation of Mozambican refugees.<sup>339</sup>

In addition to the above, official records indicate that South Africa was monitoring even the world media to establish whether or not they were reporting on South Africa and if they were, how and what were they saying. There is a whole range of correspondence from Foreign

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<sup>337</sup> Kalumiya, K. Head of Africa Desk Geneva UNHCR, Telephone Interview, 14 March 2012

<sup>338</sup> Keats, M. *Op. cit.* p36

<sup>339</sup> Tripartite Agreement between the Government of the Republic of South Africa, the Government of the Republic of Mozambique and the UNHCR for the voluntary repatriation of Mozambican refugees from the Republic of South Africa, State President's Minute No: 549, 15 October 1993

Affairs officials in various embassies across the world who were sending updates to Pretoria on what was being said about South Africa in relation to the negotiations with UNHCR and also after the 1991 MoU had been signed.

Policy Set III: Institutional or legal-bureaucratic matters related to refugees:

This policy set involves governments making decisions regarding “accession to international refugee agreements and conventions.”<sup>340</sup> This stage also involves governments deciding on the “legal definitions” for the various categories of people who fall under the broader refugee label, namely “asylum seekers”, “refugees”, “illegal aliens”.<sup>341</sup> In the case of South Africa, part of its foreign policy practice pre-1994 was not to accede to international agreements and conventions particularly in the area of refugees. Refugees were treated as illegal aliens under the Aliens Control Act. After 1994, not only did the government commit to a foreign policy that will promote participation at multilateral level, it acceded to the refugee conventions both at continental (OAU) and international (UN) levels. The government went further to develop legislation that clearly articulated definitions for asylum seekers and refugees incorporating both the OAU and UN aspects in the definition.

The logic of appropriateness as proposed within constructivism can be said to have played a role in South Africa firstly signing and ratifying the international Refugee Convention, its Protocol and the OAU Refugee Convention. When these instruments were acceded to, South Africa saw that it was appropriate for the country to do so as it had recently re-joined the international community and the new and first democratic government wanted to be seen to be living up to its commitment to human rights and the respect for international institutions. Signing the OAU Convention was in line with South Africa’s foreign policy goal of promoting the continent and using continental instruments to achieve the promotion of human rights. The OAU Convention was signed in October 1994 and whilst the UN Convention and its Protocol were signed in 1996 respectively.

However, not acceding to the refugee conventions does not mean that the pre-1994 government (particularly between 1990 and 1994) was against all conventions. South Africa

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<sup>340</sup> Jacobsen, K. 1996. Op cit. p660

<sup>341</sup> Ibid.

had at the time as part of the foreign policy strategy of re-gaining trust of the international community had either signed or acceded to other international conventions including the Convention on the Rights of the Child and the Convention against Torture.<sup>342</sup>

When interviewees were asked whether foreign policy had had an impact on the decision to adopt a non-encampment policy, three of them said no but the one interviewee who was part of the 1990 negotiations that led to the signing of the 1991 MoU and the 1993 Basic Agreement said yes. Stating that, “because of South Africa’s foreign policy of total onslaught in the region, if you set up camps then this would be a magnet for those who were affected by this policy and possibly half of Zimbabwe would be in those camps.”<sup>343</sup> However, one interviewee when asked about the role of foreign policy in making the

When asked about the role of civil society organisations in the debate on whether to have camps or not, Interviewee 2 explained that with regards to decision-making post-1994, “NCRA<sup>344</sup> played a major role in the final decision [regarding lobbying against the issue of camps]”. However, this interviewee further noted that, “Ambrosini<sup>345</sup> was a big factor in the negotiation process for the Refugees Act. He yielded great power at the time.”<sup>346</sup> The other interviewee stated that, “foreign policy was not raised from civil society but what nailed the decision is the work of civil society in promoting the skills base of refugees and how that was going to benefit the country if refugees continued to integrate in local communities”.<sup>347</sup>

In the early 1990s period, it appears that the decision not to have camps was based on a number of issues including the fact that South Africa was still an apartheid state.

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<sup>342</sup> Hansard, 29 April 1993, col.6353

<sup>343</sup> Kalumiya, telephone interview, 14 March 2012

<sup>344</sup> NCRA was the National Consortium on Refugee Affairs, a consortium of NGOs working with refugees which formed to have coordinated civil society engagement with government and other stakeholders like UNHCR, SAHRC. NCRA changed its name in 2007 and is now called the Consortium for Refugees and Migrants in South Africa (CoRMSA).

<sup>345</sup> Mario Ambrosini was the Advisor to the former Minister of Home Affairs, Chief Mangosuthu Buthelezi

<sup>346</sup> Interviewee 2, 12 January 2012

<sup>347</sup> Sr Aine, interview, 11 January 2012

The issue of the settlement of Mozambican refugees played a role on the settlement policy for refugees in South Africa. The fact that most if not all the Mozambican refugees were settled in homelands is critical. Mr Kalumiya thought that also played a role on South Africa's denial of the presence of refugees. He stated that, "the Mozambican refugees were not allowed to stay in South Africa proper but to stay in the homelands." What this implies is that the South African government then did not recognise these refugees as they felt they belonged in the homelands which were supposed to be independent territories.

Mr Kalumiya further believed that "the regime did not want to accept that there was a refugee problem in South Africa". On the other hand, [the issue of setting up camps was informed by] bureaucratic tendencies and was a double edged sword, if you set up camps then this would be a magnet, possibly half of Zimbabwe would have been in those camps." According to Mr Kalumiya the issue of refugee settlement and camps seemed to be a "double edged sword"<sup>348</sup> for the South African government. If they created refugee camps, this might have served as a magnet for other refugees leading to an influx.

The issue of camps or reception centres was raised in the context of the reception of returnees. These were set up in various parts of South Africa and were managed by NCCR. Initially when the discussions were going on, there was no concrete idea on what the refugee reception centres will look like, only that they will be set up to facilitate the reintegration by the returnees.

While Jacobsen's Policy Sets Framework is useful in understanding decisions that governments can make when making policy choices, it does not provide details of the actual decision-making processes that allow government to choose a particular policy. The framework also does not take into account the role and/or influence of other actors in the decision making process. In order to mitigate these limitations in this framework, I have used constructivism which acknowledges the role of other actors in the international system and their interaction without limiting the focus to state actors only. Process-tracing allowed the analysis of the actual decision-making process related to this study.

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<sup>348</sup> Kalumiya, K. Legal Counsel and later Head Desk of Southern Africa-Geneva UNHCR, telephone interviewed by author, 14 March 2012.

At this point of the report it's important to reflect on some of the key questions posed at the beginning. The key actors in the decision-making process were the South African government particularly Department of Foreign Affairs, UN, UNHCR, political parties, government, and church groups, NCCR, the International Organisation for Migration (IOM) and other civil society organisations like Red Cross, Lawyers for Human Rights. The negotiating team was made up of both people who had been in exile and those who had not. The policy environment was a hostile one and this resulted in a lot of compromises being made. The team that made the decisions was made up mainly of government officials particularly from the Department of Foreign Affairs,

The presented data allows one to conclude that while the decision to adopt a local integration policy for refugees was initially influenced by South Africa's foreign policy objective of destabilising the region and thereby denying that there was a refugee problem. The decision to continue with this settlement option was increasingly informed by the practice of foreign policy that was geared towards engaging multi-lateral organisations and promoting and upholding human rights and democratic principles in its quest to abandon apartheid in the early 1990s. After 1994, the main reason South Africa continued with a non-encampment policy can be attributed to the fact that South Africa had by the late 1990s acceded to international conventions. The role of domestic actors is also acknowledged in putting pressure on the government.

Having gone through the official records at DIRCO on the processes leading up to UNHCR having a presence in South Africa, addressing the refugee issue, it is clear that most of the engagement was being handled by the Department of Foreign Affairs, that on its own makes this whole issue of refugee settlement in South Africa a foreign policy issue.

## **Conclusion:**

This research has explored the role played by foreign policy in determining the choice of refugee settlement policy in South Africa. I set out to explore three explanatory factors to illustrate how foreign policy influenced the choice of refugee policy, namely foreign policy, international norms and standards and the role of domestic politics and actors. From the findings presented in this report, it is clear that while foreign policy played a major role in determining the outcome of refugee policy pre and post 1994, the outcome came about in a number of ways. Firstly through direct foreign policy practice, for instance, moving away from an isolationist apartheid driven agenda to one embracing human rights, actively not getting involved in the settlement of Mozambican refugees in order to avoid acknowledging her role in the destabilisation in the region, signing international conventions and domesticating them. Secondly, through conceding to the pressures of other foreign policy factors and actors such as the international community, domestic actors and conforming to international norms and standards.

Using constructivism supplemented by Jacobsen's Refugee Policy Choices model this study has illustrated the intersection between the three social forces of material capabilities (South Africa's role as hegemon in the region and later champion of human rights); ideas (South Africa's changing diplomatic engagement) and institutions and resulted in a non-encampment refugee policy for South Africa. Through using process-tracing, I have been able to answer the research question highlighting various periods of the foreign policy decision making process and how each of the three explanatory factors was shaped and/or influenced by foreign policy practice.

As an exploratory study, this study has opened up space for further research on the relationship between international relations and forced migration studies and particularly on South Africa's foreign policy decision-making and its influence on domestic policy in the area of refugee policy making and the choices available to government. In light of the current proposals by the South African Department of Home Affairs and the African National Congress on establishing Reception Centres for asylum seekers, this report might assist in giving perspective on why camps were never approved previously.



## ANNEXURE A

Table 2: Refugee Numbers for South Africa for the period 1991 - 2010<sup>349</sup>

Year	Refugee population	Comments
1991	0	
1992	0	
1993	250 000	Mozambican refugees
1994	91894	
1995	101 408	
1996	22 645	
1997	6 819	
1998	8 388	
1999	14 538	
2000	15 063	
2001	18 605	
2002	23 344	
2003	26 558	
2004	27 683	
2005	29 714	
2006	35 086	
2007	36 736	
2008	43 546	
2009	47 974	
2010	57 899	

This table reflects the incremental number of refugees hosted in South Africa over a period of 19 years. UNHCR reports that was the highest countries. Taken from [www.unhcr.org](http://www.unhcr.org)

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<sup>349</sup> Accessed from UNHCR website

**ANNEXURE B:****Statistics for refugees and asylum seekers 01/01/1993 – 31/12/1993**

Country of Origin	Number 01/01/1993	Number 31/12/1993	Percentage		Location	Type of assistance
			M	F		
Mozambique	250 000	250 000	48	52	Eastern Transvaal, PWV	
South African Returnees	14 153	15 104	65	35	South Africa	
Various asylum seekers	N/A	20 000	-	-	Urban areas	

**Taken from United Nations General Assembly, Executive Committee of the High Commissioner's Programme – Forty-fifth session, A/AC.96/825/Part I/26, 26 August 1994**

## ANNEXURE C

### Schedule of interviews:

<b>Name</b>	<b>Organisation/Department/Affiliation</b>	<b>Date of interview</b>
Sr Aine Hughes	Caritas	11 January 2012
Respondent 2	N/A	12 January 2012
Respondent 3	Department of Home Affairs	07 March 2012
Dr Kallu Kalumiya	UNHCR 1980-1994	14 March 2012

#### **ANNEXURE D:**

Research Questionnaire for Research on the influence of South Africa's Foreign Policy on South Africa's Refugee policy in the early 1990s:

1. Please tell me briefly how you got involved in the decision-making process that led to the signing of the Basic Agreement between the United Nations High Commissioner for Refugees (UNHCR) and the South African government in 1993?
2. Could you briefly tell me about how you were chosen to be part of this process
3. Which constituency did you represent at the time?
4. Were you part of government, if yes, which government department?
5. What portfolio or position did you occupy at the time?
6. Tell me about the processes that were engaged in
7. What was the policy environment like at the time, particularly since South Africa was in a transition period?
8. Were you involved in other policy processes after this one? For instance, the drafting of the Green Paper on International Migration in 1998?
9. Did you participate in the drafting of the Refugee Act of 1998? If yes, how were these processes different from those you engaged with in the early 1990s?
10. Was the Foreign Policy of South Africa at the time ever raised in the discussions that you had leading up to the signing of the Basic Agreement?
11. Do you think the Foreign Policy had any impact on the final decision?
12. How did the other policy makers view the decision to adopt a non-encampment policy for South Africa?
13. Did the fact that many South Africans had been in exile during apartheid play a role at all in this decision? If yes, could you elaborate more on that?
14. Were there any groups that specifically represented the interests of refugees and migrants in these processes?
15. What was their role? Do you think they were effective?

16. Which other actors were part of this process?
17. What role did International organisations like UNHCR play in this regard? Do you think if they had not been party to this process, South Africa would still have reached the same decision of having a non-encampment policy?
18. Are there any lessons that you learned during this process which you believe could benefit the current policy makers, particularly in light of the current discourse on refugee policy and the amendments to both the Immigration Act and Refugee Act?
19. What are your views on the current debates on migration and asylum in South Africa and globally?
20. Is there any other information you would like to share with me related to this research project?

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